



New South Wales

# Hunters Hill Congregational Church Property Trust Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to constitute a statutory corporation, the Hunters Hill Congregational Church Property Trust (referred to in the proposed Act as the *Trust*), and
- (b) to specify the functions of that statutory corporation, which include holding property on behalf of the Hunters Hill Congregational Church or particular congregations of that Church, and
- (c) to vest in the statutory corporation property held in trust for the Church, or a particular congregation of the Church, without the need to pay duty, and
- (d) to provide for the accountability of the Trust to members of congregations of the Church, and
- (e) to provide for the making by the Trust of Trust rules for the control, management and administration of, and dealings with trust property, the operation of the Trust and the conduct of proceedings of the Trust's Board, and
- (f) to provide for the making by congregations of the Church of congregational rules relating to how the congregations may give directions to the Trust.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

**Clause 3** defines words and expressions used in the proposed Act and provides that notes do not form part of the proposed Act.

### Part 2 Hunters Hill Congregational Church Property Trust

#### Division 1 Constitution of Trust

**Clause 4** provides for the Hunters Hill Congregational Church Property Trust to be established as a corporation.

**Clause 5** provides for the constitution of the Board of the Trust.

**Clause 6** provides for the Board to conduct the affairs of the Trust.

#### Division 2 Procedure of Board

**Clause 7** specifies some aspects of the procedure of the Board and provides for the other aspects of the procedure of the Board to be governed by the Trust rules.

**Clause 8** provides for the election of a Chairperson of the Board.

#### Division 3 Election and appointment of members of Board

**Clause 9** provides for the election of representatives of congregations as members of the Board.

**Clause 10** provides for the election of representatives of committees of management as members of the Board.

**Clause 11** provides for the appointment of Board-appointed members as members of the Board.

**Clause 12** provides for the initial membership of the Board.

#### Division 4 Members of Board

**Clause 13** specifies the circumstances in which members of the Board are taken to have vacated office.

**Clause 14** provides for the filling of casual vacancies on the Board.

**Clause 15** requires the disclosure of pecuniary interests by members of the Board.

#### Division 5 Functions of Trust

**Clause 16** specifies the purpose of the statutory trust under which the Trust holds property.

**Clause 17** specifies the functions of the Trust in relation to property vested in the Trust on behalf of the Church (but not on behalf of a particular congregation) and the other, general functions of the Trust.

**Clause 18** specifies the functions of the Trust in relation to property vested in the Trust on behalf of a particular congregation.

**Clause 19** empowers the Trust to delegate its functions (with specified limitations) to any member of the Board or to any other person or body prescribed by the Trust rules.

**Clause 20** makes it clear that the *Trustee Act 1925* applies to and in respect of the Trust.

**Clause 21** enables the Trust to hold property alone or jointly.

**Clause 22** provides for the investment of funds by the Trust and enables the Trust to invest, as one fund, money held for different purposes.

**Clause 23** enables the Trust to make arrangements with a church of another denomination concerning the use of trust property.

**Clause 24** provides that, if the Church resolves to enter into a union with any other branch of the Christian Church, the Trust is authorised to convey property in connection with that union. Such a resolution can only be made if it is approved by a meeting of each congregation of the Church, by an affirmative vote of at least 75% of members of each congregation. If the resolution relates to property held on behalf of a particular congregation, it can only be made if approved by at least 75% of the members of that congregation.

**Clause 25** makes it clear that the Church or a congregation may affiliate with the Fellowship of Congregational Churches (New South Wales) and that such affiliation does not result in any property vesting in that Fellowship.

**Clause 26** provides for the reimbursement of the Trust in certain circumstances.

## **Division 6 Trust rules**

**Clause 27** requires the Trust to make rules for the control, management and administration of, and dealings with, trust property and for the conduct of proceedings of the Board or any committee of management. The proposed section specifies the matters that the Trust rules must address, as a minimum.

**Clause 28** provides for the amendment of Trust rules.

**Clause 29** requires public notice to be given of Trust rules.

## **Division 7 Accountability of Trust**

**Clause 30** requires the Trust to publish, on the website of the Church, information concerning its composition and management.

**Clause 31** requires the Board to keep minutes of its proceedings.

**Clause 32** requires the minutes of proceedings of the Board to be made available for public inspection at no cost.

**Clause 33** requires the Trust to keep accounts.

**Clause 34** requires the Trust to prepare financial statements.

**Clause 35** requires the Trust to have its financial statements audited.

**Clause 36** requires the Trust to prepare, and submit to the annual general meeting of each congregation, a report of the Trust's dealings with, and management of, congregational trust property held on behalf of that congregation during the previous financial year.

## **Division 8 Execution of instruments by Trust**

**Clause 37** provides for the custody and use of the seal of the Trust.

**Clause 38** provides for the execution on behalf of the Trust of instruments required by law to be in writing and for the entering into of oral contracts on its behalf.

**Clause 39** enables the Trust to appoint an agent or attorney to execute documents on its behalf.

## **Division 9 Miscellaneous**

**Clause 40** provides that, if a person obtains a receipt for money paid to the Trust, the person will not be liable if the money is subsequently lost or misapplied or is not applied.

**Clause 41** entitles members of the Board and others to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

## **Part 3 Vesting of property in Trust**

**Clause 42** provides for the vesting in the Trust of property currently held in trust for the Church or a congregation. The clause also specifies the effect of the vesting of property in the Trust and makes savings and transitional provisions relating to the vesting of property in the Trust by the proposed section. In particular, it provides that when property vests in the Trust in accordance with the proposed section, the rights, obligations and liabilities of the former trustees in relation to the property will become rights, obligations and liabilities of the Trust.

**Clause 43** provides for the vesting in the Trust of property given to, or receivable or recoverable by, the Church in the future.

**Clause 44** provides for the vesting in the Trust of property given to, or receivable or recoverable by, any particular congregation in the future.

## **Part 4 Miscellaneous**

### **Division 1 Congregational rules**

**Clause 45** requires each congregation to make congregational rules and specifies the matters that the congregational rules must address, as a minimum.

**Clause 46** provides for the amendment of congregational rules.

**Clause 47** requires public notice to be given of congregational rules.

### **Division 2 General**

**Clause 48** provides for the making of regulations under the proposed Act.

**Clause 49** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act or any amendment to the proposed Act.

**Clause 50** repeals the *Hunters Hill Congregational Church Act 1977*, which vested some property in certain trustees (who are natural persons) and provided for the vesting of other property in the same trustees. (That same property is vested in the proposed statutory trustee (the Trust) by proposed section 42.)



New South Wales

# Hunters Hill Congregational Church Property Trust Bill 2013

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New South Wales

# Hunters Hill Congregational Church Property Trust Bill 2013

No. , 2013

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## A Bill for

An Act to constitute the Hunters Hill Congregational Church Property Trust; to specify the Trust's functions; to provide for the vesting of property in the Trust; and for other purposes.

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Hunters Hill Congregational Church Property Trust Act 2013*.

### 2 Commencement

This Act commences on the date of assent to this Act.

### 3 Definitions

(1) In this Act:

**Board** means the Board referred to in section 5.

**Board-appointed member** means a person appointed as a member of the Board at an annual meeting of the Board.

**Chairperson** means the Chairperson for the time being of the Board.

**Church** means the Hunters Hill Congregational Church, being a church:

(a) that, prior to 22 June 1977, was affiliated with The Congregational Union of New South Wales, and

(b) that, immediately before the date of assent to this Act, included the following congregations and ministries:

(i) the congregation meeting on the corner of Alexandra and Ferdinand Streets, Hunters Hill, known as Hunters Hill Congregational Community Church,

(ii) the congregation meeting at Narellan, known as Narellan Community Congregational Church,

(iii) the ministry of Hunters Hill Congregational Church Retirement Village, at 20A Alexandra Street, Hunters Hill,

(iv) the ministry of Angus Bristow Village, Narellan,

(v) the ministry of Narellan Congregational Community Services, and

(c) that includes any other congregations that may be recognised as congregations by the Trust from time to time, and

(d) that includes any other ministries that may be recognised as ministries by the Trust from time to time.

**committee of management** means a committee of management recognised or established by the Trust from time to time for the purpose of facilitating the establishment or management (or both) of a specified ministry.

**committee of management representative**, in relation to a committee of management, means a member of the committee of management who is elected as a member of the Board at a meeting of members of the committee of management under section 10.

**congregation** means:

(a) a constituent part of the Church that is established by the Church from time to time for the purpose of providing for the worship of God, religious education and other church activities and that the Trust has recognised as a congregation, or

(b) an assembly of persons of any church affiliated with the Church from time to time (whether or not established by the Church) that the Trust has recognised as a congregation.

<b>congregational representative</b> , in relation to a congregation, means a member of the congregation who is elected as a member of the Board at a meeting of the congregation under section 9.	1 2 3
<b>congregational rules</b> , in relation to a congregation, means the rules made by the congregation under section 45, as in force from time to time.	4 5
<b>congregational trust property</b> means property vested in the Trust by or under section 42 (2) or 44 or otherwise held by the Trust on behalf of a particular congregation (whether under section 18 or otherwise).	6 7 8
<b>conveyance</b> includes transfer, assignment and assurance.	9
<b>function</b> includes a power, authority or duty and <b>exercise</b> a function includes perform a duty.	10 11
<b>general trust property</b> means property vested in the Trust by or under section 42 (1) or 43 or otherwise held by the Trust on behalf of the Church (and not on behalf of a particular congregation) (whether under section 17 or otherwise).	12 13 14
<b>ministry</b> means an activity that is a constituent part of the Church (other than a congregation) as established from time to time that the Trust has recognised as a ministry.	15 16 17
<b>Trust</b> means the Hunters Hill Congregational Church Property Trust constituted by this Act.	18 19
<b>Trust rules</b> means the rules made by the Trust under section 27, as in force from time to time.	20 21
(2) Notes included in this Act do not form part of this Act.	22

<b>Part 2</b>	<b>Hunters Hill Congregational Church Property Trust</b>	1
<b>Division 1</b>	<b>Constitution of Trust</b>	2
<b>4</b>	<b>Constitution of Trust</b>	3
	There is constituted by this Act a corporation with the corporate name of the Hunters Hill Congregational Church Property Trust.	4 5
<b>5</b>	<b>Board of Trust</b>	6
(1)	The Trust is to have a Board comprising the following members:	7
(a)	2 congregational representatives from each congregation that has between 10 and 14 members (at the time of the election of the representatives),	8 9
(b)	3 congregational representatives from each congregation that has 15 or more members (at the time of the election of the representatives),	10 11
(c)	1 committee of management representative for each committee of management, being a representative approved by the remainder of the Board.	12 13
(2)	The Board may appoint additional members at an annual meeting of the Board, provided that, after the appointment of those additional members, the majority of Board members are congregational representatives.	14 15 16
(3)	A person elected as a congregational representative for a congregation must be a member of that congregation.	17 18
(4)	A person elected as a committee of management representative for a committee of management must be a member of that committee of management.	19 20
<b>6</b>	<b>Board is to conduct affairs of Trust</b>	21
	The Board is to conduct the affairs of the Trust, and anything done by, or with the authority of, the Board is taken to have been done by the Trust.	22 23
<b>Division 2</b>	<b>Procedure of Board</b>	24
<b>7</b>	<b>Procedure of Board</b>	25
(1)	The procedure of the Board is to be in accordance with the Trust rules, subject to this Act.	26 27
(2)	The quorum for a meeting of the Board is a majority of the members of the Board.	28
(3)	The Board is to meet at least once every 3 months.	29
<b>8</b>	<b>Chairperson</b>	30
(1)	The members of the Board are to elect one member as Chairperson of the Board.	31
(2)	The Chairperson holds office as Chairperson for a period of 12 months but is eligible (if otherwise qualified) for re-election.	32 33
(3)	If the Chairperson ceases to be a member of the Board or resigns office as Chairperson, the members of the Board are to elect some other member to be Chairperson.	34 35 36
(4)	The Chairperson is to preside at a meeting of the Board.	37
(5)	In the absence of the Chairperson from a meeting, the members of the Board who are present at a meeting of the Board are to elect one of their number who is to preside at that meeting.	38 39 40

(6)	The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	1 2
<b>Division 3</b>	<b>Election and appointment of members of Board</b>	3
<b>9</b>	<b>Election of congregational representatives</b>	4
(1)	An annual meeting of each congregation with 10 or more members is to be held in each year not earlier than one month before and not later than one month after the anniversary of the first annual meeting of the congregation held for the purposes of this Act.	5 6 7 8
(2)	The meeting is to be called and conducted in accordance with the congregational rules of the congregation.	9 10
(3)	At each such annual meeting, congregational representatives are to be elected to fill positions on the Board to be held by congregational representatives of the congregation.	11 12 13
(4)	A congregational representative elected at an annual meeting of the congregation, or elected to fill a casual vacancy, holds office until the end of the next annual meeting of the congregation.	14 15 16
<b>10</b>	<b>Election of committee of management representative</b>	17
(1)	An annual meeting of each committee of management is to be held in each year not earlier than one month before and not later than one month after the anniversary of the first annual meeting of the committee held for the purposes of this Act.	18 19 20
(2)	The meeting is to be called and conducted in accordance with the Trust rules.	21
(3)	At each such annual meeting, a committee of management representative is to be elected to fill the position on the Board to be held by the committee of management representative for the committee.	22 23 24
(4)	A person cannot be elected as a committee of management representative unless, in the opinion of the Board, the person is a committed adherent of Christian evangelical doctrines.	25 26 27
(5)	A committee of management representative elected at an annual meeting of the committee of management, or elected to fill a casual vacancy, holds office until the end of the next annual meeting of the committee of management.	28 29 30
<b>11</b>	<b>Appointment of Board-appointed members</b>	31
(1)	An annual meeting of the Board is to be held in each year not earlier than one month before and not later than one month after the anniversary of the first annual meeting of the Board held for the purposes of this Act.	32 33 34
(2)	The meeting is to be called and conducted in accordance with the Trust rules.	35
(3)	A person cannot be appointed as a member of the Board by the Board unless, in the opinion of the Board, the person is a committed adherent of Christian evangelical doctrines.	36 37 38
(4)	A Board-appointed member appointed at an annual meeting of the Board holds office until the end of the next annual meeting of the Board.	39 40
<b>12</b>	<b>Initial members of Board</b>	41
	Until all of the first elections required by this Division are held, the members of the Board are to be the persons holding office as trustees for the purposes of the <i>Hunters Hill Congregational Church Act 1977</i> immediately before its repeal by this Act	42 43 44

(being the persons in whom, immediately before the date of assent to this Act, property was vested in trust for the Church).

## **Division 4      Members of Board**

### **13      Vacation of office of Board members**

A member of the Board is taken to have vacated office if the member:

- (a) dies, or
- (b) resigns the office by notice in writing to the Board and the Board resolves to accept the resignation, or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (d) becomes a mentally incapacitated person, or
- (e) is absent from 3 consecutive meetings of the Board, notice of which has been given to the member, without prior leave of absence having been granted by the Board, or
- (f) in the case of a congregational representative for a particular congregation:
  - (i) is removed from office by resolution of the congregation, but only if an opportunity has been given to the member to address the meeting of the congregation at which the resolution is considered before the resolution is made, being a meeting conducted in accordance with the congregational rules of the congregation, or
  - (ii) ceases to be a member of the congregation, or
- (g) in the case of a committee of management representative for a particular committee of management:
  - (i) is removed from office by resolution of a meeting of the committee of management, but only if an opportunity has been given to the member to address the meeting of the committee at which the resolution is considered before the resolution is made, being a meeting conducted in accordance with the Trust rules, or
  - (ii) ceases to be a member of the committee of management, or
- (h) in the case of a Board-appointed member—is removed from office by resolution of the Board, but only if an opportunity has been given to the member to address the meeting of the Board at which the resolution is considered before the resolution is made, being a meeting conducted in accordance with the Trust rules, or
- (i) is removed from office by or pursuant to the Trust rules.

### **14      Filling of casual vacancies on Board**

If a casual vacancy occurs in the office of a Board member, a person is to be appointed to fill the vacancy for the remainder of the relevant term of office in accordance with the following procedures:

- (a) in the case of a congregational representative for a congregation—the procedures established by the congregational rules of the congregation,
- (b) in the case of a committee of management representative—the procedures established by the Trust rules,
- (c) in the case of a Board-appointed member—the procedures established by the Trust rules.

<b>15</b>	<b>Disclosure of pecuniary interests</b>	1
(1)	If:	2
(a)	a member of the Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and	3
(b)	the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	4
	the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.	5
(2)	A disclosure by a member of the Board at a meeting of the Board that the member:	6
(a)	is a member, or is in the employment, of a specified company or other body, or	7
(b)	is a partner, or is in the employment, of a specified person, or	8
(c)	has some other specified interest relating to a specified company or other body or to a specified person,	9
	is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subsection (1).	10
(3)	After a member of the Board has disclosed the nature of an interest in any matter, the member must not:	11
(a)	be present during any deliberation of the Board with respect to the matter, or	12
(b)	take part in any decision of the Board with respect to the matter.	13
<b>Division 5</b>	<b>Functions of Trust</b>	14
<b>16</b>	<b>Purpose of trust imposed by this Act</b>	15
(1)	The purpose of the trust under which the Trust holds general trust property is to hold property vested in it or acquired by it in trust for the Church and on any other trust affecting the property.	16
(2)	The purpose of the trust under which the Trust holds congregational trust property is to hold property vested in it or acquired by it in trust for the relevant congregation and on any other trust affecting the property.	17
<b>17</b>	<b>Functions of Trust in relation to general trust property and generally</b>	18
(1)	The functions of the Trust in relation to general trust property are as follows:	19
(a)	to acquire property and to use, manage, control, hold, exchange, take on lease or dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church,	20
(b)	to mortgage, charge or otherwise encumber that property for the purposes of the Church,	21
(c)	to make gifts or donations of that property for the purposes of the Church.	22
(2)	The Trust may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.	23
(3)	Without limiting subsection (1), the Trust has the following functions:	24
(a)	to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest (which may include exchanging, holding, disposing of, mortgaging, charging or otherwise encumbering, or otherwise dealing with, that property),	25

(b)	to borrow or lend money for the purposes of the Church, including any of its congregations and ministries, with or without security,	1 2
(c)	to enter into any guarantee or indemnity that may assist the Trust or the Church in the exercise of its functions,	3 4
(d)	to establish committees of management for the purpose of facilitating the establishment and management of specified ministries,	5 6
(e)	to recognise congregations on behalf of which property may be held by the Trust.	7 8
(4)	The Trust has such other functions as are conferred or imposed on it by this or any other Act.	9 10
(5)	If, while any general trust property is held by the Trust under a trust that requires it to be used for or on behalf of a particular ministry, the ministry is dissolved, the Trust may deal with the relevant property for such purposes of the Church as the Trust may determine.	11 12 13 14
(6)	This section, and section 18, do not limit section 50 of the <i>Interpretation Act 1987</i> .	15
<b>18</b>	<b>Functions of Trust in relation to congregational trust property</b>	16
(1)	The functions of the Trust in relation to congregational trust property are as follows:	17
(a)	to acquire property and to use, manage, control, hold, exchange, take on lease or dispose of and otherwise deal with property as trustee for, or for the purposes of, the congregation,	18 19 20
(b)	to mortgage, charge or otherwise encumber that property for the purposes of the congregation,	21 22
(c)	to make gifts or donations of that property for the purposes of the congregation.	23 24
(2)	The Trust is to exercise its functions in relation to congregational trust property held on behalf of a particular congregation in accordance with the directions of that congregation.	25 26 27
(3)	In particular, a congregation may impose conditions regarding the use by a ministry of congregational trust property held on its behalf, if doing so is consistent with the trust on which the property is held. Those conditions may include a requirement that money be paid from the income of the ministry to the congregation.	28 29 30 31
(4)	A direction of a congregation is validly given for the purposes of this section if it is given by a resolution of a meeting of the congregation called in accordance with the congregation's congregational rules and passed by the majority required by those rules.	32 33 34 35
(5)	If, while any congregational trust property is held by the Trust on behalf of a particular congregation, the congregation is dissolved or dispersed so that there are no members of that congregation, the Trust may deal with the relevant property for such purposes of the Church as the Trust may determine.	36 37 38 39
(6)	If, while any congregational trust property is held by the Trust under a trust that requires it to be used for or on behalf of a particular ministry, the ministry is dissolved, the Trust may deal with the relevant property for such purposes of the Church as the Trust may determine.	40 41 42 43
<b>19</b>	<b>Trust may delegate its functions</b>	44
	The Trust may, by resolution, delegate any of its functions (other than this power of delegation and the power to make Trust rules) to:	45 46
(a)	any member of the Board, or	47

(b)	any other person or body prescribed by the Trust rules.	1
<b>20</b>	<b>Application of Trustee Act 1925</b>	2
(1)	The <i>Trustee Act 1925</i> applies to and in respect of the Trust.	3
(2)	In the case of any inconsistency between this Act and the <i>Trustee Act 1925</i> , this Act prevails, to the extent of the inconsistency.	4 5
<b>21</b>	<b>Trust may hold property jointly</b>	6
	The Trust may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common.	7 8
<b>22</b>	<b>Trust may invest trust funds</b>	9
(1)	The Trust:	10
(a)	may invest or lend any funds that it holds on trust in accordance with the terms of any trust to which the funds are subject, and	11 12
(b)	may also invest or lend any such funds in accordance with the <i>Trustee Act 1925</i> , unless the investment or loan is expressly forbidden by the trust to which the funds are subject.	13 14 15
(2)	The Trust may invest trust funds held by it for different purposes or activities, or any part of those funds, as one fund.	16 17
(3)	Income arising from an investment of funds in accordance with subsection (2) is to be apportioned rateably among the several purposes or activities for which the funds are held on trust.	18 19 20
(4)	Any loss arising from an investment of funds in accordance with subsection (2) is to be apportioned rateably among the several purposes or activities for which the funds are held on trust.	21 22 23
<b>23</b>	<b>Arrangements for other churches to use trust property</b>	24
(1)	In this section, <i>scheme of co-operation</i> means a scheme entered into by the Trust:	25
(a)	with or involving a church of another denomination or any congregation or constituent element of such a church, and	26 27
(b)	concerning the use of general trust property or congregational trust property.	28
(2)	The Trust may permit general trust property to be used and managed for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.	29 30
(3)	The Trust may permit congregational trust property held on behalf of a particular congregation to be used and managed for the purposes of a scheme of co-operation, but only:	31 32 33
(a)	on the direction of the congregation given by a meeting of that congregation conducted in accordance with the procedure established by the congregation, and	34 35 36
(b)	on such terms and conditions as the congregation determines at that meeting or any subsequent meeting so conducted.	37 38
(4)	Any proceeds derived by the Trust from a scheme of co-operation are to be applied in the manner determined by the Trust.	39 40
(5)	Conditions that the Trust may determine under this section include:	41
(a)	conditions with respect to the making of monetary contributions towards the acquisition, construction, alteration, maintenance or repair of property vested	42 43



	in or held on behalf of a co-operating church, congregation or constituent element, and	1 2
	(b) the giving or taking of a security or charge over any property.	3
(6)	Either general trust property or congregational trust property may be used in accordance with a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.	4 5 6
(7)	Neither general trust property nor congregational trust property is to be regarded as property that is subject to an express trust expressly forbidding its use under a scheme of co-operation merely because it is directed to be held in trust for worship within, or for the purposes of, the Church or the relevant congregation.	7 8 9 10
<b>24</b>	<b>Conveyance of property if Church forms union with another branch of the Christian Church</b>	11 12
(1)	In this section, <i>scheme of union</i> means a scheme entered into involving a union between the Church and another branch of the Christian Church.	13 14
(2)	The Trust may convey any general trust property or congregational trust property to any person or body for purposes connected with the Church entering into a scheme of union.	15 16 17
(3)	Any conveyance of property in the Trust in accordance with this section does not affect:	18 19
	(a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or	20 21
	(b) any trust on which the property was held, immediately before the conveyance of the property.	22 23
(4)	The Trust may only convey general trust property if the conveyance is approved by a meeting of each congregation of the Church, held in accordance with the procedures established by the congregation, by an affirmative vote of at least 75% of members of each congregation.	24 25 26 27
(5)	The Trust may only convey congregational trust property if the conveyance is approved by a meeting of the congregation on behalf of which it is held, held in accordance with the procedures established by the congregation, by an affirmative vote of at least 75% of all members of the congregation.	28 29 30 31
<b>25</b>	<b>Relationship with Fellowship of Congregational Churches</b>	32
(1)	Nothing in this Act prevents the Church, or any congregation acting separately, from affiliating with the Fellowship of Congregational Churches (New South Wales) as constituted by the <i>Fellowship of Congregational Churches (New South Wales) Incorporation Act 1977</i> .	33 34 35 36
(2)	Affiliation by the Church (or a congregation) with the Fellowship of Congregational Churches (New South Wales) does not result in any property held by the Trust, or any other Church land or property, vesting in the Fellowship of Congregational Churches (New South Wales).	37 38 39 40
<b>26</b>	<b>Reimbursement of the Trust</b>	41
(1)	In this section, an <i>outstanding liability</i> arises if:	42
	(a) the Trust is required to pay to any other person any money for which the Trust is liable by reason of its having lawfully incurred the liability on behalf of a congregation, and	43 44 45

- (b) the money has not been paid by the congregation to the Trust in a timely manner. 1  
2
- (2) The Trust may, for the purpose of being reimbursed for an outstanding liability in relation to a congregation: 3  
4
  - (a) mortgage or sell all or any congregational trust property held on behalf of that congregation at such time, in such manner and upon such terms and conditions as it thinks fit, and 5  
6  
7
  - (b) out of the proceeds of the mortgage or sale, reimburse the Trust or pay, as the case may require, all interest and other expenses, including legal costs, if any, incurred in connection with the exercise of its powers under this section. 8  
9  
10
- (3) Any residue of money held by the Trust after it has exercised its powers under subsection (2) with respect to congregational trust property held by it for the benefit of a congregation is to continue to be held by the Trust for the benefit of the congregation. 11  
12  
13  
14

## **Division 6 Trust rules 15**

### **27 Trust must make Trust rules 16**

- (1) The Trust must make Trust rules, not inconsistent with this Act: 17
  - (a) for the control, management and administration of, and dealings with, general trust property or congregational trust property, and 18  
19
  - (b) for the operation of the Trust, and 20
  - (c) for the conduct of proceedings of the Board (which may provide for meetings of the Board to be held by electronic means). 21  
22
- (2) Without limiting the matters that can be the subject of the Trust rules, the Trust rules must address the following matters, as a minimum: 23  
24
  - (a) the Trust functions that may be delegated, 25
  - (b) the persons to whom those Trust functions may be delegated, 26
  - (c) the procedure by which the Trust can recognise that an entity is a congregation for the purposes of this Act, 27  
28
  - (d) the procedure by which the Trust can recognise that an entity is a ministry for the purposes of this Act, 29  
30
  - (e) the procedure for the appointment of Board-appointed members, 31
  - (f) the procedure for meetings of the Board, including the following: 32
    - (i) the procedure for the calling of ordinary meetings, annual meetings and extraordinary meetings on the request of members, 33  
34
    - (ii) the procedure for the conduct of business at meetings, 35
    - (iii) whether voting is to be by secret ballot, by show of hands or otherwise, 36
    - (iv) whether members of the Board are entitled to vote by proxy at meetings, 37
    - (v) the majority required for a resolution of a meeting at which a quorum is present to be carried, 38  
39
    - (vi) a requirement that minutes are to be kept of the proceedings of each meeting, which are to include a record of at least the following: 40  
41
      - (A) all motions put to the meeting, 42
      - (B) amendments to such motions, 43
      - (C) the names of the movers and seconders of those motions and amendments, 44  
45

	(D) the resolutions passed by the meeting,	1
	(vii) a requirement that the minutes of the proceedings of all meetings be kept and provided to members of the Board on request,	2 3
	(g) the procedure for meetings of committees of management at which committee of management representatives are elected.	4 5
	(3) The Trust rules can deal with additional matters, but only in a manner consistent with subsections (1) and (2).	6 7
<b>28</b>	<b>Amendment of Trust rules</b>	8
	A Trust rule may be amended or repealed by a subsequent rule made under this Division.	9 10
<b>29</b>	<b>Public notice of Trust rules</b>	11
	(1) The Trust must make the Trust rules, as in force from time to time, publicly available at no cost.	12 13
	(2) Without limiting the manner in which the Trust rules must be made publicly available, a copy of the rules must be published on the website of the Church.	14 15
<b>Division 7</b>	<b>Accountability of Trust</b>	16
<b>30</b>	<b>Details to be made public</b>	17
	The Trust must publish the following on the website of the Church:	18
	(a) a list of members of the Board and their contact details,	19
	(b) details of each place of business of the Trust,	20
	(c) details of where the minutes of proceedings of Board meetings, and records of Board resolutions, can be inspected,	21 22
	(d) details of where financial statements of the Trust can be inspected,	23
	(e) a record of any current delegations of the Board's functions, including the persons to whom such functions are delegated,	24 25
	(f) the Trust rules,	26
	(g) the congregational rules for each congregation,	27
	(h) a list of all congregations and ministries recognised by the Trust for the purposes of this Act.	28 29
<b>31</b>	<b>Keeping of minutes of proceedings</b>	30
	The Board must keep:	31
	(a) minutes of the proceedings of its meetings, and	32
	(b) a record of its resolutions.	33
<b>32</b>	<b>Access to minutes of proceedings</b>	34
	The minutes of proceedings of Board meetings, and the records of Board resolutions, are to be made available for inspection by any member of a congregation, at no cost.	35 36
<b>33</b>	<b>Keeping of accounts</b>	37
	The Trust must keep records that correctly record and explain its financial transactions and financial position.	38 39

<b>34</b>	<b>Financial statements</b>	1
	As soon as practicable after the end of each financial year, the Trust must cause financial statements for that year to be prepared, being statements that give a true and fair view of the Trust's affairs.	2 3 4
<b>35</b>	<b>Auditing of financial statements</b>	5
(1)	As soon as practicable after the end of each financial year, the Trust must cause the financial statements for that year to be audited.	6 7
(2)	The auditor's report:	8
(a)	must be prepared in accordance with the Australian Auditing Standards, and	9
(b)	must state whether the Trust has kept such financial records as are necessary to enable financial statements to be prepared in accordance with the Australian Accounting Standards.	10 11 12
(3)	The audited financial reports are to be made available for inspection by any member of the Church, at no cost.	13 14
<b>36</b>	<b>Report to congregations</b>	15
	The Trust must prepare, and submit to the annual general meeting of each congregation, a report of the Trust's dealings with, and management of, congregational trust property held on behalf of that congregation during the previous financial year.	16 17 18 19
<b>Division 8</b>	<b>Execution of instruments by Trust</b>	20
<b>37</b>	<b>Custody and use of seal of Trust</b>	21
(1)	The seal of the Trust is to be kept by the Chairperson and may be affixed to a document only:	22 23
(a)	in accordance with a resolution of the Trust, and	24
(b)	in the presence of at least 2 members of the Board (one of whom is the Chairperson), and	25 26
(c)	with an attestation by the signatures of those members of the fact of the affixing of the seal.	27 28
(2)	The common seal is to be affixed to such documents as the Trust determines from time to time.	29 30
(3)	The common seal is to be in such form as the Board determines.	31
<b>38</b>	<b>How Trust may execute certain instruments</b>	32
(1)	Any instrument relating to any property or matter that, if made or executed by an individual, would by law be required to be in writing under seal may be made on behalf of the Trust in writing under the seal of the Trust.	33 34 35
(2)	Any contract relating to any property or matter that, if made between individuals, would by law be valid although made orally only may be made on behalf of the Trust by any person acting under its authority, express or implied.	36 37 38
<b>39</b>	<b>Trust may appoint agents or attorneys to execute under seal</b>	39
(1)	The Trust may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed or other document on the Trust's behalf as its agent or attorney.	40 41 42

- (2) Any deed signed by such an agent or attorney on behalf of the Trust binds the Trust 1  
and has the same effect as if it were under the seal of the Trust. 2

## **Division 9      Miscellaneous** 3

### **40    Persons exonerated from liability on receiving receipt for certain money paid to Trust** 4

A receipt for money paid to the Trust that: 5

- (a) is executed under the seal of the Trust, or 6  
(b) is in writing signed by two members of the Board (one of whom is the 7  
Chairperson), or 8  
(c) is in writing signed by a person duly authorised for the purpose by the Trust or 9  
by two members of the Board (one of whom is the Chairperson), 10

exonerates the person by whom or on whose behalf the money is paid from any 11  
liability for the loss, misapplication or non-application of the money. 12

### **41    Certain persons to be indemnified out of trust property** 13

A member of the Board (including the Chairperson), and any other person, exercising 14  
in good faith a function in relation to general trust property or congregational trust 15  
property in accordance with this Act or any Trust rule, and the executor or 16  
administrator of any such member of the Board, Chairperson or person, are entitled 17  
to be indemnified out of general trust property or congregational trust property 18  
against all expenses and liabilities that they incur in connection with the exercise of 19  
that function. 20

## Part 3 Vesting of property in Trust

<b>42 Vesting of property in Trust on date of assent to this Act</b>	2
(1) Any property that was, immediately before the date of assent to this Act, vested in any person in trust for the Church (and not for a particular congregation) is, on that day, divested from that person and is, to the extent that it is so vested, vested (without conveyance) in the Trust.	3 4 5 6
(2) Any property that was, immediately before the date of assent to this Act, vested in any person in trust for a particular congregation is, on that day, divested from that person and is, to the extent that it is so vested, vested (without conveyance) in the Trust.	7 8 9 10
(3) The vesting of property in the Trust by this section does not affect:	11
(a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or	12 13
(b) any trust on which the property was held, immediately before the vesting of the property.	14 15
(4) No attornment to the Trust by a lessee of land vested in the Trust by this section is necessary.	16 17
(5) The vesting of property by this Part is not a dutiable transaction for the purposes of the <i>Duties Act 1997</i> .	18 19
(6) A dutiable transaction within the meaning of the <i>Duties Act 1997</i> , or an instrument that effects or evidences a dutiable transaction and that occurs or is executed or registered only for:	20 21 22
(a) a purpose ancillary to, or consequential on, the operation of this section, or	23
(b) the purpose of giving effect to this section,	24
is not chargeable with duty under the <i>Duties Act 1997</i> .	25
(7) On and from the date of assent to this Act, the following provisions have effect in relation to property vested in the Trust in accordance with this section:	26 27
(a) the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act,	28 29
(b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act,	30 31
(c) proceedings before a court or tribunal by or against a former trustee that, immediately before the date of assent to this Act, were pending or in the course of being heard are taken to be proceedings by or against the Trust,	32 33 34
(d) to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the date of assent to this Act, it is taken to be an act, matter or thing done or omitted to be done by the Trust,	35 36 37 38
(e) a reference in any instrument to a former trustee is to be read as a reference to the Trust,	39 40
(f) time that had commenced to run in relation to a former trustee is taken to be time that had commenced to run in relation to the Trust.	41 42
(8) In this section:	43
<b><i>former trustee</i></b> means any person in whom, immediately before the date of assent to this Act, property was vested in trust for the Church or the particular congregation, as the case may be.	44 45 46

<b>43 Vesting of other property in Trust on behalf of Church</b>	1
(1) To the extent to which an instrument (including a will) provides for any property (other than property to which section 42 applies):	2
	3
(a) to be given to the Church or to a person for, or for the benefit of, or in trust for, the Church or for the purposes of the Church, or	4
	5
(b) to be declared or directed to be held by any person for, or for the benefit of, or in trust for, the Church or for the purposes of the Church, or	6
	7
(c) to be payable to, or receivable by, the Church or any person on behalf of the Church, or	8
	9
(d) to be recoverable by the Church or by any person for the Church,	10
a reference in the instrument to the Church, or to that person, is to be treated as a reference to the Trust.	11
	12
(2) Where property is vested in the Trust by subsection (1), the property is to be held by the Trust on behalf of the Church subject to the provisions of this Act relating to any such property.	13
	14
	15
(3) In this section, a reference to property being given to, held for or for the benefit of, or being payable to or recoverable by, the Church does not include a reference to property being given to, held for or for the benefit of, or being payable to or recoverable by a particular congregation.	16
	17
	18
	19
<b>44 Vesting of other property in Trust on behalf of a congregation</b>	20
(1) To the extent to which an instrument (including a will) provides for any property (other than property to which section 42 applies):	21
	22
(a) to be given to a congregation or to a person for, or for the benefit of, or in trust for, a congregation or for the purposes of a congregation, or	23
	24
(b) to be declared or directed to be held by any person for, or for the benefit of, or in trust for, a congregation or for the purposes of a congregation, or	25
	26
(c) to be payable to, or receivable by, a congregation or any person on behalf of a congregation, or	27
	28
(d) to be recoverable by a congregation or by any person for a congregation,	29
a reference in the instrument to the congregation, or to that person, is to be treated as a reference to the Trust.	30
	31
(2) Where property is vested in the Trust by subsection (1), the property is to be held by the Trust on behalf of the congregation subject to the provisions of this Act relating to any such property.	32
	33
	34

<b>Part 4</b>	<b>Miscellaneous</b>	1
<b>Division 1</b>	<b>Congregational rules</b>	2
<b>45</b>	<b>Congregations must make congregational rules</b>	3
(1)	Each congregation must make congregational rules, not inconsistent with this Act.	4
(2)	Without limiting the matters that can be the subject of congregational rules, the congregational rules for a congregation must address the following matters:	5
(a)	meetings of the congregation, including the following:	6
(i)	the procedure for the calling of ordinary meetings, annual meetings and extraordinary meetings on request of members,	7
(ii)	the procedure for the conduct of business at meetings,	8
(iii)	the quorum for meetings,	9
(iv)	whether voting is to be by secret ballot, by show of hands or otherwise,	10
(v)	the majority required for a decision of a meeting at which a quorum is present to be a decision of the congregation,	11
(vi)	whether business of the meeting can be transacted by telephone or other electronic means,	12
(vii)	a requirement about the disclosure of pecuniary interests by members of the congregation, that is to the same effect as section 15,	13
(viii)	a requirement that minutes are to be kept of the proceedings of each meeting, which are to include a record of at least the following:	14
(A)	all motions put to the meeting,	15
(B)	amendments to such motions,	16
(C)	the names of the movers and seconders of those motions and amendments,	17
(D)	the resolutions passed by the meeting,	18
(ix)	a requirement that the minutes of the proceedings of all meetings be kept and provided to members of the congregation on request,	19
(b)	the election of congregational representatives, including the following:	20
(i)	the calling of elections,	21
(ii)	nominations for election,	22
(iii)	the ballot.	23
(3)	The congregational rules for a congregation can deal with additional matters, but only in a manner consistent with subsections (1) and (2).	24
<b>46</b>	<b>Amendment of congregational rules</b>	25
	A congregational rule may be amended or repealed by a subsequent rule made under this Division.	26
<b>47</b>	<b>Public notice of congregational rules</b>	27
(1)	The Trust must ensure that the congregational rules for each congregation, as in force from time to time, are publicly available at no cost.	28
(2)	Without limiting the manner in which congregational rules must be made publicly available, a copy of the rules must be published on the website of the Church (see section 30 (g)).	29



<b>Division 2</b>	<b>General</b>	1
<b>48</b>	<b>Regulations</b>	2
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	3 4 5 6
<b>49</b>	<b>Savings and transitional regulations</b>	7
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, or any Act that amends this Act.	8 9
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	10 11
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	12 13 14
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	15 16 17
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	18 19 20
<b>50</b>	<b>Repeal of Hunters Hill Congregational Church Act 1977 No 30</b>	21
	The <i>Hunters Hill Congregational Church Act 1977</i> is repealed.	22