

First print



New South Wales

Methodist Church of Samoa in Australia Property Trust Bill 1998

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 to hold property on behalf of the Methodist Church of Samoa in Australia, and
 - (b) to specify the functions of the statutory corporation, and
 - (c) to vest in the statutory corporation property held in trust for the Church.
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Outline of provisions

Part 1 Preliminary

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be proclaimed.

Clause 3 defines terms used in the proposed Act. Among the terms defined are *Board*, *Chairman*, *property*, *the Trust* and *trust property*.

Part 2 Constitution and functions of Trust

Clause 4 provides for the Methodist Church of Samoa in Australia Property Trust (referred to in the proposed Act as *the Trust*) to be established as a corporation. The Trust is to consist of a Board of Trustees comprising the Chairman, the secretary, the treasurer and 4 appointed members of the Church.

Clause 5 specifies the functions of the Trust. These include:

- (a) buying, holding and selling Church property, and
- (b) acquiring property by gift or by devise or bequest, and
- (c) borrowing money for Church purposes.

Clause 6 will enable the Trust to make by-laws for certain purposes. Those purposes include the procedure by which the Board of Trustees is to conduct the business of the Trust.

Clause 7 will empower the Trust to delegate its functions to a member of the Board of Trustees or to any other person or body prescribed by the by-laws.

Clause 8 will enable the Trust to hold or acquire property alone or jointly.

Clause 9 provides for the investment of funds by the Trust and, in particular, will enable the Trust to invest, as one fund, money held for different purposes.

Clause 10 will empower the Trust to make advances from its trust funds and specifies how such advances may be made.

Clause 11 will enable the Trust to make arrangements with a church of another denomination concerning the use of trust property.

Clause 12 will enable the Trust to vary the terms of a trust if it has become impossible or inexpedient to carry out those terms.

Clause 13 will enable the Trust to be the executor or administrator of an estate in which the Church has a beneficial interest. The clause will also enable the Trust to accept appointment as trustee of property held for the Church's benefit.

Clause 14 will authorise the Trust to act on behalf of the Church in settling the compensation payable in the event that any trust property is compulsorily acquired.

Part 3 Vesting of property in Trust

Clause 15 provides for the vesting in the Trust of property currently held in trust for the Church.

Clause 16 provides for the vesting in the Trust of property given to, payable to, or receivable or recoverable by, the Church in the future.

Part 4 Miscellaneous

Clause 17 provides for the custody and use of the seal of the Trust.

Clause 18 provides for the execution, on behalf of the Trust, of deeds and instruments required by law to be in writing and for the entering into of oral contracts on its behalf.

Clause 19 will enable the Trust to appoint agents to execute documents on its behalf.

Clause 20 will enable the Trust to certify that it holds property on trust for the Church.

Clause 21 provides that, if a person obtains a receipt for money paid to the Trust, the person will not be liable if the money is lost or misapplied or is not applied.

Clause 22 is intended to remove the need for a person involved in a property dealing with the Trust to inquire whether the Trust has power to deal with property and will protect the person even if the person had notice that the Trust had no such power.

Clause 23 will entitle members of the Trust and others to be indemnified out of trust property against liability for certain things done by them in good faith concerning the property.

Clause 24 provides for the service of documents on the Trust.

Clause 25 gives effect to Schedule 1, which contains savings and transitional provisions relating to property vested in the Trust in accordance with proposed section 15.

Schedule 1 provides that, when property vests in the Trust in accordance with proposed section 15, the rights, liabilities and obligations of the former trustees in relation to the property will become the rights, liabilities and obligations of the Trust.



New South Wales

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New South Wales

Methodist Church of Samoa in Australia Property Trust Bill 1998

No. , 1998

A Bill for

An Act to constitute as a corporation the Methodist Church of Samoa in Australia Property Trust; to specify the Trust's functions; to provide for the vesting of certain property in the Trust; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Methodist Church of Samoa in Australia Property Trust Act 1998*. 5

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act: 10

appointed day means the day on which section 4 commences.

Australian Synod means the district synod within Australia of the Methodist Church of Samoa.

Board means the Board of Trustees referred to in section 4.

by-laws means the by-laws of the Trust. 15

Chairman means the Chairman of the Australian Synod.

Church means the part of the Methodist Church of Samoa within Australia.

conveyance includes transfer, assignment and assurance.

exercise a function includes perform a duty. 20

function includes a power, authority or duty.

Trust means the Methodist Church of Samoa in Australia Property Trust constituted by this Act.

trust property means property held by the Trust.

(2) It is the intention of Parliament that the provisions of this Act relating to property, including the vesting of property in the Trust, should apply, as far as possible, to property situated outside New South Wales. 25

Part 2 Constitution and functions of Trust

4 Constitution of Trust as a corporation

- (1) There is constituted by this Act a corporation under the corporate name of the Methodist Church of Samoa in Australia Property Trust. 5
- (2) The Trust is to consist of a Board of Trustees comprising the following members:
 - (a) the Chairman of the Australian Synod, who is to be the chairman of the Board.
 - (b) the secretary of the Australian Synod, who is to be the secretary of the Board. 10
 - (c) the treasurer of the Australian Synod, who is to be the treasurer of the Board.
 - (d) 4 persons, being lay members or Ministers of the Church, appointed by the Chairman. 15
- (3) Subject to this section, the Board is to conduct the business of the Trust in accordance with the by-laws.
- (4) The quorum for a meeting of the Board is 4 members (one of whom must be the Chairman).
- (5) A decision supported by a majority of the votes (one of that majority being the vote of the Chairman) cast at a meeting of the Board at which a quorum is present is the decision of the Board. 20

5 Functions of Trust

- (1) The functions of the Trust are as follows:
 - (a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church, 25
 - (b) to acquire property by gift, devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest, 30
 - (c) to borrow or lend money for the purposes of the Church.

(d) to mortgage, charge or otherwise encumber trust property,

(e) to 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.

(2) The Trust has such other functions as are conferred or imposed on it by this Act. 5

(3) This section does not limit section 50 of the *Interpretation Act 1987*.

6 Trust may make by-laws

(1) The Trust may make by-laws, not inconsistent with this Act, for the control and management of, and dealings with, trust property and with respect to the procedure of the Board for conducting the business of the Trust. 10

(2) A certificate under the seal of the Trust to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is, until the contrary is proved, evidence that the by-law was in force on that day. 15

(3) A by-law may be amended or repealed by a subsequent by-law made under this section. 20

(4) A by-law is not binding on any person who is not a member of the Church.

7 Trust may delegate its functions

The Trust may, by resolution, delegate any of its functions (other than this power of delegation and the power to make by-laws) to: 25

(a) any member of the Board, or

(b) any other person or body prescribed by the by-laws.

8 Trust may hold property jointly

The Trust may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common. 30

9 Trust may invest trust funds

- (1) The Trust:
- (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 5
 - (b) may also invest or lend any such funds in accordance with the *Trustee Act 1925*, unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.
- (2) The Trust may invest trust funds held by it for different purposes or activities, or any part of those funds, as one fund. 10
- (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.
- (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. 15

10 Trust may make advances

- (1) The Trust may make advances out of its trust funds for any activity, service, institution or interest of the Church. 20
- (2) Any such advance is taken to be an investment of the funds concerned and is to bear interest at a rate fixed by the Trust.
- (3) If the terms of any such advance so provide, the advance and any interest on the advance are a charge on those assets (if any) that the Trust holds for the activity, service, institution or interest of the Church for which the advance was made. 25

11 Arrangements for other churches to use trust property

- (1) In this section, *scheme of co-operation* means a scheme entered into by the Trust:
- (a) with or involving a church of another denomination or any congregation or activity of such a church, and 30
 - (b) concerning the use of trust property.

- (2) The Trust may permit 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.
- (3) Any proceeds derived by the Trust from a scheme of co-operation are to be applied in the manner decided by the Trust. 5
- (4) Conditions that the Trust may determine under this section include:
 - (a) conditions with respect to the making of monetary contributions towards the acquisition, construction, alteration, maintenance or repair of property vested in or held on behalf of a co-operating church or congregation, and 10
 - (b) the giving or taking of a security or charge over any property. 15
- (5) 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.
- (6) Trust property is not 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 on trust for worship within, or the purposes of, the Church. 20

12 Trusts may be varied

- (1) The Trust may by resolution declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purpose or any other of its terms. 25
- (2) The Trust may, by the same or a later resolution, declare that the property is subject to another trust and, on the making of such a declaration: 30
 - (a) the trust that is to be replaced ceases, and
 - (b) the property is to be held subject to the other trust.
- (3) In making such a declaration, the Trust must ensure that the property is dealt with as nearly as is possible for the purposes for which the property was held immediately before the resolution. 35

- (4) However, the Trust may by resolution declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the trust that is to be replaced.
- (5) On making a resolution under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of the Church as the Trust declares by resolution. 5

13 Trust may act as executor, administrator or trustee

- (1) The Trust: 10
- (a) may apply for and obtain, or join in applying for and obtaining, probate of the will, or letters of administration for the estate, of a deceased person if the Church has a beneficial interest (vested or contingent) in the estate of that person, and 15
- (b) may accept appointment and act as trustee or co-trustee under a trust if the trust property is not already vested in the Trust by or in accordance with this Act and the trust was created wholly or partly for the benefit of the Church, and 20
- (c) may do all things necessary for the exercise of its functions as executor, administrator or trustee.
- (2) If authorised by the Trust to do so, a member of the Board or a person employed by the Trust may, on behalf of the Trust: 25
- (a) swear an affidavit, or
- (b) make a declaration or statement, or
- (c) give security and do any other act or thing,
- that is, by any charter, enactment or rule of court, required to be done by a person who is applying for or granted probate or letters of administration, or who is administering a trust. 30
- (3) The Trust may:
- (a) renounce executorship, or
- (b) decline to act as administrator of an estate, or
- (c) retire, or decline to act, as trustee of property (other than property vested in it by or in accordance with Part 3). 35

- (4) Any commission or other remuneration earned by the Trust as an executor, administrator or trustee appointed under the authority of this section belongs to the Trust and the Trust may use or apply the commission or remuneration only for an object or purpose specified or approved by the Trust. 5

14 Trust may make claims for compensation on compulsory acquisition etc

In relation to the exchange, dedication or compulsory acquisition of any trust property, the Trust may:

- (a) act on behalf of the Church and make claims for compensation, and 10
- (b) agree to and settle any such claims for such amount, and on such terms and conditions, as it thinks fit.

Part 3 Vesting of property in Trust

15 Vesting of property in Trust on appointed day

- (1) Any property that was, immediately before the appointed day, vested in any corporation or other person in trust for the Church is, on that day, divested from the corporation or other person and is, to the extent that it was so vested, vested (without conveyance) in the Trust. 5
- (2) The vesting of the property in the Trust does not affect:
- (a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or 10
- (b) any trust on which the property was held, immediately before the vesting of the property.
- (3) No attornment to the Trust by a lessee of land vested in the Trust by this section is necessary.
- (4) An instrument executed only for: 15
- (a) the purpose of giving effect to this section, or
- (b) a purpose ancillary to, or consequential on, the operation of this section,
- is exempt from New South Wales duty.

16 Vesting of other property in Trust 20

To the extent to which an instrument (including a will) provides for any property (other than property to which section 15 applies):

- (a) to be given to the Church or to a person (other than the Trust) for the benefit of the Church, or 25
- (b) to be payable to, or receivable by, the Church or any person (other than the Trust) on behalf of the Church, or
- (c) to be recoverable by the Church or by any person (other than the Trust) for the Church,

a reference in the instrument to the Church, or to that person, is to be treated as a reference to the Trust. 30

Part 4 Miscellaneous

17 Custody and use of seal of Trust

- (1) The seal of the Trust is kept by the Chairman and may be affixed to a document only:
 - (a) in accordance with a resolution of the Trust, and 5
 - (b) in the presence of not fewer than 2 members of the Board, and
 - (c) with an attestation by the signatures of those members of the fact of the affixing of the seal.

- (2) An instrument purporting to have been sealed with the seal of the Trust and to have been signed by not fewer than 2 members of the Board is taken to have been executed in accordance with this section. 10

18 How Trust may execute certain documents

- (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. 15

- (2) Any instrument relating to any property or matter that, if made by or between individuals, would by law be required to be in writing signed by the parties to be bound by it may be made on behalf of the Trust in writing by any person acting under its authority, express or implied. 20

- (3) Any contract relating to any property or matter that, if made between individuals, would by law be valid although made orally only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority, express or implied. 25

19 Trust may appoint agents

- (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 its behalf as its agent or attorney. 30

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

20 Evidence of certain matters relating to Trust

- (1) A certificate under the seal of the Trust to the effect that property specified in the certificate is held by it on trust for the Church is, in any legal proceedings, evidence that the property is so held. 5
- (2) A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the *Real Property Act 1900* as the proprietor of that estate or interest, evidence of its contents. 10

21 Persons exonerated from liability on receiving receipt for money paid to Trust

15

A receipt for money paid to the Trust that:

- (a) is executed under the seal of the Trust, or
- (b) is in writing signed by not fewer than 2 members of the Board, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust. 20

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

22 Inquiries relating to dealings with trust property unnecessary in certain cases

25

Whenever the Trust acquires, disposes of or otherwise deals with property, it is not necessary for:

- (a) the other party or parties to the transaction, or
- (b) the Registrar-General or any other person registering or certifying title to the property, 30

to inquire whether the Trust has power to acquire, dispose of or otherwise deal with the property and none of those persons is affected by notice that the Trust has no such power.

Schedule 1 Savings and transitional provisions

(Section 25)

1 Definition

In this Schedule, *former trustee* means a corporation or any other person in whom, immediately before the appointed day, property was vested in trust for the Church. 5

2 Provisions relating to property vested in Trust under section 15

On and from the appointed day, the following provisions have effect in relation to property vested in the Trust in accordance with section 15: 10

- (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.
- (b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act. 15
- (c) proceedings before a court or tribunal by or against a former trustee that, immediately before the appointed day, were pending or in the course of being heard become proceedings by or against the Trust, 20
- (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 appointed day, it becomes an act, matter or thing done or omitted to be done by the Trust, 25
- (e) a reference in any document to a former trustee becomes a reference to the Trust,

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Schedule 1 Savings and transitional provisions

- (f) time that had commenced to run in relation to a former trustee becomes time that had commenced to run in relation to the Trust.