

First print



New South Wales

Roman Catholic Church Communities' Lands Amendment Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Roman Catholic Church Communities' Lands Act 1942* so as to provide for the voluntary or compulsory winding up of bodies corporate created by the Act.

Outline of provisions

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Roman Catholic Church Communities' Lands Act 1942* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [10] inserts the following new provisions in the *Roman Catholic Church Communities' Lands Act 1942*:

Proposed section 20 provides for the voluntary winding up of a body corporate created by the Act, if the members of the body corporate pass a resolution (supported by not less than 75 per cent of the members) in favour of winding up and the winding up is approved by the Bishop of the relevant Diocese.

Proposed section 21 sets out the circumstances in which an application can be made to the Supreme Court for the winding up of a body corporate created by the Act.

Proposed section 22 applies the procedure under the *Corporations Law* for the purposes of a winding up.

Proposed section 23 directs the manner in which any surplus property of a body corporate that is wound up is to be distributed and provides that such a distribution of property does not affect any trust on which that property was held immediately before the distribution.

Proposed section 24 provides for the vesting in the Bishop of the relevant Diocese of any assets that would have become the property of a body corporate if it had not been wound up.

Proposed section 25 empowers the Bishop of the relevant Diocese or any other interested person to apply to the Supreme Court to make orders in relation to a winding up.

Proposed section 26 provides for the Act to be amended to omit references to a body corporate that is wound up.

Proposed section 27 empowers the Governor to make regulations (including regulations under proposed section 22 modifying the application of the *Corporations Law* to the procedure for a winding up under the Act).

Schedule 1 [1] inserts new definitions.

Schedule 1 [2] updates a reference to the governing body of a community.

Schedule 1 [3] updates references to an office holder in a community.

Schedule 1 [4], [5], [6], [11] and [12] update references to Schedules.

Schedule 1 [7] and [8] provide for instruments executed in relation to the proposed new provisions to be exempt from duty.

Schedule 1 [9] updates the terminology used in a provision.

First print



New South Wales

Roman Catholic Church Communities' Lands Amendment Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Roman Catholic Church Communities' Lands Act 1942 No 23	2
Schedule 1 Amendments	3



New South Wales

Roman Catholic Church Communities' Lands Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Roman Catholic Church Communities' Lands Act 1942* so as to provide for the voluntary or compulsory winding up of bodies corporate created by the Act; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Roman Catholic Church Communities' Lands Amendment Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Roman Catholic Church Communities' Lands Act 1942 No 23	8 9
The <i>Roman Catholic Church Communities' Lands Act 1942</i> is amended as set out in Schedule 1.	10 11

Schedule 1 Amendments	1
(Section 3)	2
[1] Section 2 Definitions	3
Insert in alphabetical order in section 2 (1):	4
<i>Assets</i> means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.	5 6 7 8
<i>Court</i> means the Supreme Court.	9
<i>Liabilities</i> means any liabilities, debts or obligations (whether present or future and whether vested or contingent).	10 11
<i>Member</i> of a body corporate that is the trustee of community land for a community means:	12 13
(a) the Provincial for the community, and	14
(b) the community consultors for the community.	15
<i>Relevant diocese</i> in relation to a body corporate means the Diocese within which the principal site or house in New South Wales of the community of whose land the body corporate is or was the trustee is or was last situated.	16 17 18 19
<i>Rights</i> means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).	20 21
[2] Section 2 (1), definition of “community consultors”	22
Insert “governing” before “council”.	23
[3] Section 2 (1), definition of “Provincial” and section 2 (2) (a) (i)	24
Insert “, Leader” after “Superior” wherever occurring.	25
[4] Sections 2, 4 (2) and 8 (4) and (5)	26
Omit “the Second Schedule” wherever occurring.	27
Insert instead “Schedule 2”.	28

[5] Section 2 (2) (b)	1
Omit “The Second Schedule”. Insert instead “Schedule 2”.	2
[6] Sections 9 (1) and 14 (1)	3
Omit “the First Schedule” wherever occurring. Insert instead “Schedule 1”.	4
[7] Section 19 Exemption from duty	5
Omit “section 8” from section 19 (1) (a).	6
Insert instead “section 8, 22 or 23”.	7
[8] Section 19 (1) (b)	8
Omit “that section”. Insert instead “those sections”.	9
[9] Section 19	10
Insert “and duty under the <i>Duties Act 1997</i> ” after “stamp duty” wherever occurring.	11 12
[10] Sections 20–27	13
Insert after section 19:	14
20 Voluntary winding up	15
(1) A body corporate created by this Act may be voluntarily wound up under this section if:	16 17
(a) a notice of the proposed voluntary winding up of the body corporate is published in a newspaper circulating in the relevant diocese, and	18 19 20
(b) at least one month after that notice is published at least 75 per cent of the members of the body corporate have passed a resolution in favour of voluntary winding up, and	21 22 23 24
(c) the Bishop of the relevant diocese has issued a certificate under the Bishop’s hand and seal:	25 26
(i) approving the voluntary winding up of the body corporate, and	27 28

(ii) certifying that the requirements of this subsection have been satisfied in relation to the body corporate.	1 2 3
(2) Except with the leave of the Court, the members of a body corporate cannot resolve that it be wound up voluntarily if proceedings for the body corporate to be wound up by the Court under section 21 have been commenced and have not been finally determined.	4 5 6 7 8
(3) A body corporate is not authorised to acquire any assets or incur any liabilities after the passing of a resolution under subsection (1) (b) that it be wound up voluntarily. However, the corporate status and other corporate powers of the body corporate continue until it is wound up under this section.	9 10 11 12 13
(4) If the Bishop has certified that all of the requirements of subsection (1) have been satisfied in relation to a body corporate, the body corporate must be wound up.	14 15 16
(5) The Bishop who approves a voluntary winding up of a body corporate must ensure that notice of the winding up of a body corporate under the <i>Corporations Law</i> is published in a newspaper circulating in the relevant diocese.	17 18 19 20
(6) Subsection (3) ceases to apply if the Bishop decides not to approve a voluntary winding up.	21 22
21 Winding up by the Court	23
(1) The Court may order the winding up of a body corporate created by this Act if:	24 25
(a) at least 75 per cent of the members of the body corporate have passed a resolution in favour of winding up by the Court, or	26 27 28
(b) the community of whose land the body corporate is the trustee has suspended its operations or religious duties, or both, for a continuous period of not less than 12 months (whether before or after the commencement of this section) immediately before the order is made, or	29 30 31 32 33
(c) the body corporate is unable to meet its liabilities, or	34
(d) the Court is otherwise of the opinion that it is just and equitable that the body corporate be wound up.	35 36

(2)	An application to the Court for the winding up of a body corporate may be made by:	1
		2
(a)	the body corporate (but only if a resolution is passed by at least 75 per cent of the members of the body corporate in favour of making the application), or	3
		4
		5
(b)	the Bishop of the relevant Diocese.	6
22	Procedure for winding up	7
(1)	Except as provided by this Act or by the regulations:	8
(a)	a body corporate may be wound up under this Act in the same manner as a company registered under the <i>Corporations Law</i> , and	9
		10
		11
(b)	Chapter 5 of the <i>Corporations Law</i> applies with respect to the winding up of a body corporate under this Act in the same way as it applies to the winding up of a company registered under that Law, and	12
		13
		14
		15
(c)	a winding up under this Act takes effect at the time specified under Chapter 5 of the <i>Corporations Law</i> .	16
		17
(2)	The provisions of Chapter 5 of the <i>Corporations Law</i> apply to and in respect of any winding up of a body corporate with any modifications, including modifications by way of addition to or exclusion of those provisions, that may be prescribed by the regulations.	18
		19
		20
		21
		22
(3)	A past or present member of a body corporate is not liable to pay the body corporate's liabilities on the winding up or the costs, charges or expenses of the winding up.	23
		24
		25
23	Distribution of surplus property	26
(1)	Despite the provisions of the <i>Corporations Law</i> and any other Act or law, if there is property of a former body corporate after the body corporate is wound up, the liquidator must transfer the property to another body corporate created by this Act, or under the <i>Roman Catholic Church Trust Property Act 1936</i> , specified in writing by the Bishop of the relevant Diocese of the wound up body corporate.	27
		28
		29
		30
		31
		32
		33
(2)	The Bishop of the relevant Diocese must inform the Attorney General of that transfer.	34
		35

(3) The transfer of property under this section does not affect any trust on which the assets were held immediately before the distribution, and any such trust continues.	1 2 3
(4) To the extent to which it is possible or expedient, a person or body to whom property was transferred under this section must, if the property concerned was transferred or given on trust for any purpose, hold that property as nearly as may be possible for that purpose.	4 5 6 7 8
24 Vesting of assets after winding up of body corporate	9
(1) To the extent to which any assets:	10
(a) are given to a body corporate that has been wound up under this Act, or to a person for the benefit of that body corporate, or	11 12 13
(b) are payable to, or recoverable by, the body corporate or any person on behalf of the body corporate,	14 15
by or under an instrument that takes effect on or after the date on which the body corporate is wound up, a reference in the instrument to the body corporate is to be treated as a reference to the Bishop of the relevant Diocese.	16 17 18 19
(2) In this section:	20
<i>instrument</i> means an instrument (other than this Act) that creates, modifies, or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any will or any judgment, order or process of a court or tribunal.	21 22 23 24 25
25 Application to Court	26
The Bishop of the relevant Diocese, or any other interested person who has leave of the Court, may apply to the Court:	27 28
(a) to determine any question arising in the winding up of a body corporate under this Act, or in the application of the <i>Corporations Law</i> to the winding up, or	29 30 31
(b) to exercise all or any of the powers that the Court might exercise if the body corporate were being wound up by the Court.	32 33 34

26	Amendment of Act following winding up	1
	The Governor may, by proclamation published in the Gazette, amend sections 2 and 4, or Schedule 2, as the case requires, to omit the corporate name of a body corporate that has been wound up under this Act and the canonical name of the relevant community.	2 3 4 5 6
27	Regulations	7
	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.	8 9 10 11 12
[11]	First Schedule	13
	Omit "First Schedule" from the heading to the Schedule. Insert instead "Schedule 1".	14 15
[12]	Second Schedule	16
	Omit "Second Schedule" from the heading to the Schedule. Insert instead "Schedule 2".	17 18