



New South Wales

Russian Orthodox Church Property Trust 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 *Russian Orthodox Church Property Trust Act 1991*:

- (a) to limit the operation of the Trust established by the Act to property in New South Wales, and
- (b) to recognise the distinction between property that is held by the Trust for the benefit of the Diocese (*Diocesan property*) and property that is held for the benefit of a Parish (*Parish property*), and
- (c) to require the Trust to deal with Diocesan property in accordance with the rules of the Church (*the Statute*), and Parish property in accordance with the Statute and the By-laws of a Parish, and
- (d) to alter the make-up of the Board of the Trust so that the Board will comprise the members for the time being of the Diocesan Council, and

- (e) to make other minor amendments with respect to arrangements with other churches, contract procedures, by-law making powers, and the terminology of 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 *Russian Orthodox Church Property Trust Act 1991* set out in Schedule 1.

Schedule 1 Amendments

Application of Act only to property in NSW

Schedule 1 [4] makes an amendment to limit the operation of the Act to property in New South Wales. **Schedule 1 [3]** makes a consequential amendment to the definition of *property* (among other consequential amendments).

Schedule 1 [5] (substituted section 4 (1)) changes the name of the Trust established by the Act by including “(NSW)” in its name. **Schedule 1 [1]** and **[2]** make changes to the long and short titles of the Act to reflect this change of name.

Diocesan property and Parish property

Schedule 1 [17] and **[18]** amend provisions that presently operate to vest property in the Trust in trust for the Church. The amendments provide instead for property to be vested in trust for the Diocese or for a Parish to reflect the fact that property vested in the Trust is considered to be either property of the Diocese or property of a Parish.

Schedule 1 [6] alters the functions of the Trust to require that the Trust holds Diocesan property in trust for the Diocese and holds Parish property in trust for the Parish concerned.

Schedule 1 [8] requires the Trust to act in a manner consistent with the Statute and, when Parish property is involved, in a manner consistent with the Parish By-laws of the Parish.

Schedule 1 [7], [10], [11], [13], [14], [15], [16] and [20] make amendments that are consequential on the distinction between Diocesan property and Parish property and the alteration of the functions of the Trust to reflect this distinction.

The Board of the Trust

Schedule 1 [5] (substituted section 4 (2)) changes the make up of the Board of the Trust so that the members for the time being of the Diocesan Council (which is the representative executive body of the Church) will be the Board of the Trust. The number of members of the Board required to constitute a quorum is changed from 3 to 7 to reflect the change in number of Board members. Provision is also made for a secretary of the Trust, and for meetings of the Board to be able to be conducted by various electronic communication methods. The title “Ruling Bishop” is substituted for that of “Archbishop”.

Other amendments

Schedule 1 [9] makes a minor change to broaden the power of the Board to make by-laws with respect to Trust property.

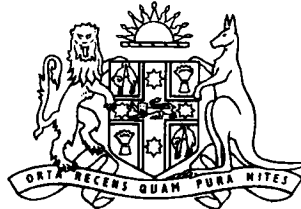
Schedule 1 [12] omits a section that provides for arrangements with other churches for the use of Trust property.

Schedule 1 [19] omits a provision that allows oral contracts to be entered into on behalf of the Trust.

Schedule 1 [21]–[24] enact consequential transitional provisions.

Various amendments are made to update terminology, to accord with the Statute and the usages of the Church.

First print



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New South Wales

Russian Orthodox Church Property Trust Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Russian Orthodox Church Property Trust Act 1991* to make further provision for the vesting of property in the Trust established by that Act; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Russian Orthodox Church Property Trust 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 Russian Orthodox Church Property Trust Act 1991 No 91	8 9
The <i>Russian Orthodox Church Property Trust Act 1991</i> is amended as set out in Schedule 1.	10 11

Schedule 1 Amendments

	1
(Section 3)	2
[1] Long title	3
Omit “Russian Orthodox Church Outside of Russia in Australia and New Zealand Property Trust”.	4
Insert instead “Russian Orthodox Church (NSW) Property Trust”.	5
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[2] Section 1	7
Omit the section. Insert instead:	8
1 Name of Act	9
This Act is the <i>Russian Orthodox Church (NSW) Property Trust Act 1991</i> .	10
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[3] Section 3 Definitions	12
Omit section 3 (1). Insert instead:	13
(1) In this Act:	14
Board means the Board referred to in section 4.	15
Church or <i>Russian Orthodox Church</i> means the Russian Orthodox Church Outside of Russia.	16
	17
conveyance includes transfer, assignment and assurance.	18
Diocesan Council means the Diocesan Council of the Diocese established in accordance with the Statute.	19
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Diocese means the Australian and New Zealand Diocese of the Church. The Diocese is an inseparable part of the Church governed in accordance with the Statute.	21
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	23
Parish means a Parish within the Diocese, established in accordance with the Statute.	24
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Parish By-laws means the by-laws governing a Parish in accordance with the Statute.	26
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property means property in New South Wales.	28

Ruling Bishop means the Ruling Bishop for the time being of the Diocese appointed in accordance with the Statute. 1
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the Association means the association incorporated in New South Wales under the name “The Trustees of the Russian Orthodox Church Outside of Russia in Australia”. 3
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the Statute means the document entitled “Diocesan Statute of the Australian and New Zealand Diocese of the Russian Orthodox Church Abroad (in Exile) approved by the Bishops’ Synod of this Church at New York now known as the Russian Orthodox Church Outside of Russia by the decisions of 27th February 1957, 22nd August 1957 and 24th March 1959”, as that document may from time to time be amended, and includes any document that may replace that document in accordance with the laws of the Church. 6
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Trust means the Russian Orthodox Church (NSW) Property Trust constituted by this Act. 15
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trust property means property held by the Trust. 17

[4] Section 3 (3) 18

Insert after section 3 (2): 19

- (3) This Act applies, and is taken always to have applied, only to property in New South Wales. 20
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[5] Section 4 22

Omit the section. Insert instead: 23

4 Constitution of the Trust as a corporation 24

- (1) There is constituted by this Act a corporation under the corporate name of the Russian Orthodox Church (NSW) Property Trust. 25
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- (2) The Trust is to have a Board comprising the members for the time being of the Diocesan Council. The Board is to conduct the affairs of the Trust, and anything done in the name of or on behalf of the Trust by or with the authority of the Board is taken to have been done by the Trust. 28
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- (3) The secretary for the time being of the Diocesan Council is to be the secretary of the Trust. 33
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<p>(4) The quorum for a meeting of the Board is 7 members including the Ruling Bishop.</p> <p>(5) A decision supported by a majority of the votes (one of that majority being the vote of the Ruling Bishop) cast at a meeting of the Board at which a quorum is present is the decision of the Board.</p> <p>(6) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members. A member who participates in a meeting in that way is taken to be present at the meeting.</p> <p>[6] Section 5 Functions of the Trust</p> <p>Omit section 5 (1) (a). Insert instead:</p> <p style="padding-left: 40px;">(a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Diocese in the case of property that is vested in the Trust in trust for the Diocese,</p> <p style="padding-left: 40px;">(a1) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, a Parish in the case of property that is vested in the Trust in trust for the Parish,</p> <p>[7] Section 5 (1) (c)</p> <p>Omit the paragraph. Insert instead:</p> <p style="padding-left: 40px;">(c) to borrow or lend money for the purposes of the Diocese or for the purposes of a Parish,</p> <p>[8] Section 5 (1A)</p> <p>Insert after section 5 (1):</p> <p style="padding-left: 40px;">(1A) In exercising its functions under this Act, the Trust must at all times act in a manner consistent with the Statute and (to the extent that the exercise of a function relates to property held in trust for a Parish) in a manner consistent with the Parish By-laws of the Parish.</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p>
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[9] Section 6 Trust may make by-laws	1
Omit section 6 (1). Insert instead:	2
(1) The Trust may make by-laws, not inconsistent with this Act or with the Statute, with respect to trust property and with respect to the procedure of the Board for conducting the affairs of the Trust.	3 4 5 6
[10] Section 10 Trust may make advances	7
Omit “Church” from section 10 (1). Insert instead “Diocese or of a Parish”.	8
[11] Section 10 (3)	9
Omit “Church”. Insert instead “Diocese or of the Parish”.	10
[12] Section 11 Arrangements for other churches to use trust property	11
Omit the section.	12
[13] Section 12 Trusts may be varied	13
Omit “Church” from section 12 (5). Insert instead “Diocese or of a Parish”.	14
[14] Section 13 Trust may act as executor etc	15
Omit “Church” from section 13 (1) (a). Insert instead “Diocese or a Parish”.	16
[15] Section 13 (1) (b)	17
Omit “Church”. Insert instead “Diocese or of a Parish”.	18
[16] Section 14 Trust may make claims for compensation on compulsory acquisition etc	19 20
Omit “Church”. Insert instead “Diocese or of a Parish”.	21

[17] Section 15 Vesting of property in the Trust	1
Omit section 15 (1). Insert instead:	2
(1) Any property that was, immediately before the commencement of the 2001 amendment, vested in the Association or in any other person in trust for the Diocese or for a Parish is, on that commencement, divested from the Association or that person and is, to the extent that it was so vested, vested (without conveyance) in the Trust:	3 4 5 6 7 8
(a) in trust for the Diocese (in the case of property that was so vested in trust for the Diocese), or	9 10
(b) in trust for the Parish concerned (in the case of property that was so vested in trust for a Parish).	11 12
(1A) In subsection (1), <i>the 2001 amendment</i> means the substitution of that subsection by the <i>Russian Orthodox Church Property Trust Amendment Act 2001</i> .	13 14 15
[18] Section 16	16
Omit the section. Insert instead:	17
16 Vesting of other property in the Trust	18
(1) To the extent to which an instrument (including a will) provides for any property (other than property to which section 15 applies):	19 20 21
(a) to be given to the Church, to the Diocese or to a Parish, or to a person (other than the Trust) for the benefit of the Church, of the Diocese or of a Parish, or	22 23 24
(b) to be payable to, or receivable by, the Church, the Diocese or a Parish, or any person (other than the Trust) on behalf of the Church, of the Diocese or of a Parish, or	25 26 27 28
(c) to be recoverable by the Church, by the Diocese or by a Parish, or by any person (other than the Trust) for the Church, for the Diocese or for a Parish,	29 30 31
a reference in the instrument to the Church, to the Diocese, to a Parish, or to that person, is taken to be a reference to the Trust.	32 33 34

(2)	To the extent to which an instrument referred to in subsection (1) refers to the Church, the Trust may, for the purpose of determining whether the property concerned is held by the Trust in trust for the Diocese or for a Parish, determine whether that reference should be read as a reference to the Diocese or to a particular Parish or Parishes. Such a determination has effect accordingly.	1 2 3 4 5 6 7
[19]	Section 18 How the Trust may execute certain documents	8
	Omit section 18 (3).	9
[20]	Section 20 Evidence of certain matters relating to the Trust	10
	Omit “Church” from section 20 (1). Insert instead “Diocese or for a Parish”.	11
[21]	Schedule 1 Savings and transitional provisions	12
	Insert before clause 1:	13
	Part 1 Provisions consequent on enactment of Act	14
[22]	Schedule 1, clause 1	15
	Omit the clause. Insert instead:	16
	1 Definitions	17
	In this Schedule:	18
	<i>former trustee</i> means the Association or any other person in whom, immediately before the vesting day, property was vested in trust for the Church, for the Diocese or for a Parish.	19 20 21
	<i>the 2001 amending Act</i> means the <i>Russian Orthodox Church Property Trust Amendment Act 2001</i> .	22 23
	<i>vesting day</i> means the day on which property vests in the Trust in accordance with section 15, being:	24 25
	(a) in the case of property that vested in accordance with that section as originally enacted—the appointed day under this Act as originally enacted, or	26 27 28

	(b) in the case of property that vests in accordance with that section as amended by the 2001 amending Act—the day on which that amendment commences.	1 2 3
[23]	Schedule 1, clause 2 Provisions relating to property vested in the Trust under section 15	4 5
	Omit “appointed day” wherever occurring. Insert instead “vesting day”.	6
[24]	Schedule 1	7
	Insert at the end of the Schedule:	8
	Part 2 Provisions consequent on enactment of Russian Orthodox Church Property Trust Amendment Act 2001	9 10 11
	3 Change of name of Trust	12
	(1) The Russian Orthodox Church (NSW) Property Trust is a continuation of and the same legal entity as the Russian Orthodox Church Outside of Russia in Australia and New Zealand Property Trust as constituted by this Act immediately before the commencement of this clause.	13 14 15 16 17
	(2) Subclause (1) does not affect the operation of section 53 (Alterations of names and constitutions) of the <i>Interpretation Act 1987</i> .	18 19 20
	4 Previous operation of section 15	21
	The amendment of section 15 by the 2001 amending Act does not affect the previous operation of that section.	22 23