



New South Wales

Baptist Churches of New South Wales Property Trust Amendment Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to change the way in which the Baptist Churches of New South Wales Property Trust (the *Trust*) deals with property that it holds on trust for congregations, including as follows:

- (a) by allowing the secretary of a congregation to give the Trust directions on behalf of the congregation in relation to certain minor matters relating to the repair or alteration of buildings, rather than going through the formal procedure of holding a meeting of the congregation,
- (b) by expanding the qualifications of directors or officers of certain corporations that will allow those corporations to qualify to benefit from Trust decisions,
- (c) by requiring small congregations to be consulted when the Baptist Union temporarily exercises functions relating to trust property held on trust for them,
- (d) by permitting a degree of Baptist Union oversight of small congregations when such congregations give directions to the Trust about trust property,

- (e) by requiring that when a congregation votes to give a direction to the Trust, as well as the current requirement that at least a 75% majority vote in favour of the direction, at least 10 persons must vote in favour of it.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Baptist Churches of New South Wales Property Trust Act 1984 No 4

Qualifications of directors and officers of corporations that can benefit from dealings with trust property

Schedule 1 [5] replaces a provision which currently requires that directors or officers of a corporation that benefits from the use of trust property as security for a loan must be members of the congregation for which the Trust holds the property on trust. The amendment provides that any “qualifying corporation” may benefit from the loan. *Qualifying corporation* is defined by the amendment made by **Schedule 1 [8]** so as to include corporations whose directors or officers are not members of the congregation that gives the direction but are members of another congregation affiliated with the Baptist Union or are committed evangelicals.

Schedule 1 [6] replaces a provision which limits the corporations that can benefit from the Trust investing in or dealing with trust property that is not land, so as to extend it to “qualifying corporations”. The effect of the amendment and the new definition will be to allow trust property that is not land to be invested, disposed of or otherwise dealt with for purposes that are for the benefit of a corporation that has directors or officers who are either members of the congregation giving the direction to the Trust to invest in or deal with property or who are not members of that congregation, but are members of another congregation affiliated with the Baptist Union or are committed evangelicals.

Directions on minor building matters can be given to Trust on behalf of a congregation

Schedule 1 [7] simplifies the administrative arrangements involved in a congregation directing the Trust in relation to certain minor matters about the repair or alteration of church buildings, schools or manses on property held on trust for a congregation. The amendment provides that, in relation to those minor matters, the secretary of the relevant congregation can give a direction on behalf of the congregation without the need for the formal procedure of holding a meeting of the congregation.

Schedule 1 [9] makes a consequential amendment to reflect the fact that some directions may be given on behalf of a congregation.

Baptist Union's dealings with trust property held for dissolved congregations or congregations with less than 10 members

Schedule 1 [11] sets out the powers that the Baptist Union has if, while any trust property situated in a district is vested in the Trust, a congregation in the district is dissolved or consists of less than 10 members.

The proposed new section 29 restates, without any change in substance, what happens when the congregation is dissolved or dispersed.

However, proposed section 29AA includes an additional requirement that the Baptist Union, in exercising all of the functions with respect to trust property that the Act gives it when the remaining membership of a congregation falls below 10 members, must consult the congregation's members, if any remain, before giving any direction to the Trust concerning property held on trust for the congregation.

Directions of small congregations require Executive Committee consent

Schedule 1 [12] provides that, where a congregation's membership is between 10 and 20 members, a resolution in favour of giving a direction to the Trust has effect only if the Executive Committee of the Baptist Union has consented to the direction being given.

Majority vote required at meeting for purpose of giving directions

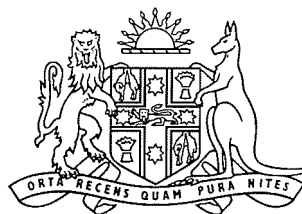
Schedule 1 [13] amends a provision about voting at meetings of congregations for the purposes of giving directions to the Trust. As well as requiring a majority of not less than 75% of the votes of members over 18 who are present, a vote will only be passed if it is passed by at least 10 persons.

Minor amendments

Schedule 1 [1], [3], [4] and [10] clarify those provisions in which the term "church" is intended to refer to a church building and not a congregation.

Schedule 1 [2] inserts definitions of *deacon* and *secretary* of a congregation, so as to clarify that they include references to persons holding substantially similar positions, but with a different title. A definition of *district* is also inserted. (Section 35 (3) (b) of the Act provides for the Executive Committee of the Baptist Union to determine the boundaries of a district.)

Schedule 1 [15] omits a provision that refers to a repealed provision about voting and **Schedule 1 [14]** omits a cross-reference to the provision being omitted.



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Baptist Churches of New South Wales Property Trust Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Baptist Churches of New South Wales Property Trust Act 1984* to make further provision in relation to property held on trust for a congregation; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Baptist Churches of New South Wales Property Trust
Amendment Act 2013*.

2 Commencement

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

Schedule 1	Amendment of Baptist Churches of New South Wales Property Trust Act 1984 No 4	1 2 3
[1] Section 4 Definitions		4
	Omit “church or other building” from paragraph (c) of the definition of <i>congregation</i> in section 4 (1).	5 6
	Insert instead “church building or in any other building”.	7
[2] Section 4 (1)		8
	Insert in alphabetical order:	9
	<i>deacon</i> , in relation to a congregation, means:	10
	(a) a person elected to a position of deacon of the congregation by the Baptist Union, or	11 12
	(b) a person elected to a position of leadership in the congregation by the Baptist Union (whether the holder of the position is described as an elder or by any other term).	13 14 15
	<i>district</i> means an area of land that the Executive Committee has determined in writing is a district for the purposes of this Act.	16 17
	<i>secretary</i> , in relation to a congregation, means:	18
	(a) a person elected to the position of secretary of the congregation, or	19 20
	(b) if no person has been elected to a position of that title—a person elected to a position that exercises the responsibilities of a secretary of the congregation (whether the holder of the position is described as a Church secretary, an administrator or a public officer, or by any other term).	21 22 23 24 25 26
[3] Section 22 General functions of Trust		27
	Insert “building” after “church” wherever occurring in section 22 (2) (d) and (5) (b) (ii).	28 29

[4] Section 22 (2) (e)	1
Omit the paragraph. Insert instead:	2
(e) despite paragraph (d), permit an occasional minister or	3
other person to officiate in any such church building, but	4
only if:	5
(i) the pastor or the deacons of the congregation that for	6
the time being worships in the church building	7
concur or concur, or	8
(ii) where there is no pastor and there are no deacons of	9
that congregation—the officer who is a member of	10
that congregation and who is nominated by that	11
congregation for the purposes of this subparagraph	12
concur,	13
[5] Section 22 (2) (f) (iii)	14
Omit the subparagraph. Insert instead:	15
(iii) a qualifying corporation,	16
[6] Section 22 (2) (h) (iii)	17
Omit the subparagraph. Insert instead:	18
(iii) a qualifying corporation, and	19
[7] Section 22 (4)	20
Omit the subsection. Insert instead:	21
(4) A church building, school or manse on land vested in the Trust	22
may be repaired, altered, enlarged, demolished, rebuilt or	23
substituted by another building, and another building may be	24
erected on land so vested, by the Trust only if the Trust has been	25
directed to do so:	26
(a) in the case of a church building, school or land—by the	27
congregation that is entitled to use the church building,	28
school or land, or	29
(b) in the case of a manse—by the congregation whose pastor	30
is entitled to use the manse, or	31
(c) if the Executive Committee has determined in writing that	32
the matter is minor and that the secretary of a congregation	33
can give such a direction in the particular circumstances—	34
by the secretary of the congregation that is entitled to use	35
the church building, school or land, or of the congregation	36
whose pastor is entitled to use the manse, as the case may	37
be.	38

[8] Section 22 (8)	1
Insert after section 22 (7):	2
(8) In this section:	3
<i>qualifying corporation</i> , in relation to a direction given under subsection (2) (f) or (h), means a corporation:	4
(a) that has objects that are not inconsistent with the general objects of the Baptist Union, and	5
(b) the constitution of which provides:	6
(i) that a person is not eligible for membership of the corporation unless that person is a member of the specific congregation giving the direction, and	7
(ii) that a person ceases to be a member of the corporation if that person ceases to be a member of the specific congregation giving the direction, and	8
(iii) that no alteration or amendment to its constitution can take effect without the consent in writing of the Trust, and	9
(c) whose directors and other officers are:	10
(i) members of the corporation (and accordingly members of the congregation giving the direction), or	11
(ii) members of another congregation, or	12
(iii) persons whom the Executive Committee is satisfied are committed adherents of evangelical doctrines or committed members of an evangelical church or party, and	13
(d) that has a proportion of directors or other officers who are neither members of the corporation nor of a congregation that is no more than that determined by the Executive Committee in writing from time to time.	14
[9] Section 28 Reimbursement of Trust	15
Omit “of a congregation” from section 28 (1) (a) (i).	16
Insert instead “given by or on behalf of a congregation”.	17
[10] Section 28 (3) (b) (i) and (ii)	18
Insert “building” after “church” wherever occurring.	19

[11] Sections 29 and 29AA	1
Omit section 29. Insert instead:	2
29 Baptist Union temporarily has trust property functions of dissolved congregations	3 4
(1) This section applies if, while any trust property situated in a district is vested in the Trust, a congregation which is or was established in the district is dissolved or dispersed so that there are no members of a congregation in that district meeting together for the public worship of God according to the usages of the Baptist denomination.	5 6 7 8 9 10
(2) Until a congregation having 10 members or more is again formed in that district, the Baptist Union is to have and may exercise all of the functions with respect to the trust property that the dissolved or dispersed congregation would otherwise have had and would otherwise have been capable of exercising.	11 12 13 14 15
(3) However, for the first 6 months after the dissolution or dispersal:	16
(a) the Baptist Union may not direct the Trust to sell or dispose of any trust property held by it on behalf of the dissolved or dispersed congregation, and	17 18 19
(b) the Trust must not sell or dispose of any such trust property.	20 21
29AA Baptist Union temporarily has trust property functions of congregations with small membership	22 23
(1) This section applies if, while any trust property situated in a district is vested in the Trust, a congregation which is or was established in the district consists of less than 10 members.	24 25 26
(2) Until the congregation increases in membership to 10 members or more:	27 28
(a) the Baptist Union is to have and may exercise all of the functions with respect to the trust property that the congregation would otherwise have had and would otherwise have been capable of exercising, and	29 30 31 32
(b) the congregation does not have those functions and is not capable of exercising them.	33 34
(3) The Baptist Union must not exercise any function pursuant to subsection (2) with respect to trust property held on behalf of a congregation unless the Baptist Union has first consulted the members of the congregation.	35 36 37 38

- (4) However, for the first 2 years during which the congregation consists of less than 10 members: 1
- (a) the Baptist Union may not direct the Trust to sell or dispose of any trust property held by it on behalf of the congregation unless the members of the congregation consent, and 2
- (b) the Trust must not sell or dispose of any trust property held by it on behalf of the congregation unless the members of the congregation consent. 3

[12] Section 42 Directions of congregation to Trust 10

Omit section 42 (1) and (2). Insert instead: 11

- (1) A direction of a congregation is, for the purposes of this Act, given when: 12
- (a) a resolution in favour of the direction has been passed by the required majority at a meeting of the congregation of which notice has been given in accordance with this section, and 13
- (b) in the case only of a congregation with between 10 and 20 members—the Executive Committee has consented to the direction being given. 14

[13] Section 42 (4A) 21

Insert after section 42 (4): 22

- (4A) For the purposes of this section, a resolution is passed by the required majority if it is passed: 23
- (a) by a majority of not less than 75% of the personal votes of such of the members of the congregation as are of or above the age of 18 years and as are present and vote at the meeting, and 24
- (b) by at least 10 persons. 25

Baptist Churches of New South Wales Property Trust Amendment Bill 2013

Schedule 1 Amendment of Baptist Churches of New South Wales Property Trust Act
1984 No 4

[14] Section 43 Meetings of District Associations for purpose of giving directions to Trust	1
	2
Omit “Subject to subsection (2), the” from section 43 (1). Insert instead “A”.	3
[15] Section 43 (2)	4
Omit the subsection.	5