

**ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY
(AMENDMENT) ACT 1988 No. 126**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Amendment of Anglican Church of Australia Trust Property Act 1917 No. 21

SCHEDULE 1—AMENDMENTS



**ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY
(AMENDMENT) ACT 1988 No. 126**

NEW SOUTH WALES



Act No. 126, 1988

An Act to make provision with respect to the use of church trust property and ownership thereof pursuant to the Anglican Church of Australia Trust Property Act 1917, and for that purpose and associated purposes to amend that Act; and for other purposes. [Assented to 30 December 1988]

Anglican Church of Australia Trust Property (Amendment) 1988

WHEREAS by an Ordinance duly passed by the Provincial Synod of the Province of New South Wales of the Anglican Church of Australia it was ordained and directed that application be made for the enactment of an Act in or to the effect of the provisions herein contained:

The Legislature of New South Wales therefore enacts:

Short title

1. This Act may be cited as the Anglican Church of Australia Trust Property (Amendment) Act 1988.

Amendment of Anglican Church of Australia Trust Property Act 1917 No. 21

2. The Anglican Church of Australia Trust Property Act 1917 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

(1) Section 1 (**Short title and Parts**)—

Omit the matter relating to Part 7, insert instead:

PART 7—VARIATION OF TRUSTS—ss. 32, 32A

**PART 7A—JOINT USE OF CHURCH TRUST PROPERTY—
s. 32B**

(2) Part 7A—

After Part 7, insert:

PART 7A—JOINT USE OF CHURCH TRUST PROPERTY

Use of property jointly with other churches

32B. (1) The synod of a diocese may, by ordinance, make provision, either generally or for a particular case, for and in relation to—

- (a) the use, by the Anglican Church, of church trust property for a purpose of the Anglican Church and by a church of another denomination for a purpose of that church, jointly or jointly and severally;
- (b) the acquisition, by the corporate trustees for the diocese, or by other trustees, of property to be so used; and
- (c) the application of moneys vested in—
 - (i) the corporate trustees for the diocese;
 - (ii) other trustees; or

SCHEDULE 1—AMENDMENTS—*continued*

- (iii) any churchwardens or other persons holding office under an ordinance of the synod,
upon trust for the use, benefit or purpose of the Anglican Church in the diocese upon, or in connection with, any specified purpose as defined by subsection (2).
- (2) In subsection (1), “specified purpose” means—
- (a) the acquisition of land or other property by—
- (i) the corporate trustees for the diocese;
 - (ii) other trustees on behalf of the Anglican Church; or
 - (iii) trustees on behalf of a church of another denomination,
- to be used by the Anglican Church for a purpose of the Anglican Church and by a church of another denomination for a purpose of that church, jointly, or jointly and severally;
- (b) the erection of a building to be so used; or
- (c) the repair, alteration or maintenance of a building or other property so used, or to be so used.
- (3) Subsection (2) applies to the erection of a building, and to the repair, alteration or maintenance of a building or other property, whether or not the land on which the building is to be erected, or is erected, or whether or not the property, is vested in—
- (a) the corporate trustees for the diocese;
 - (b) other trustees on behalf of the Anglican Church; or
 - (c) trustees on behalf of a church of another denomination.
- (4) The power of the synod of a diocese to make ordinances under subsection (1) includes power to make ordinances authorising the bishop of the diocese to enter into an agreement with the proper authority of a church of another denomination for the use of land or other property (including church trust property) by the Anglican Church for a purpose of the Anglican Church and by the church of that other denomination for a purpose of that church, jointly, or jointly and severally, and, in connection with that use, for the acquisition of land or other property, for the erection of a building on land or for the repair, alteration or maintenance of a building on land, or of other property, whether or not the land or other property is vested in—
- (a) the corporate trustees for the diocese;
 - (b) other trustees on behalf of the Anglican Church; or

Anglican Church of Australia Trust Property (Amendment) 1988

SCHEDULE 1—AMENDMENTS—*continued*

(c) trustees on behalf of the church of that other denomination.

(5) The corporate trustees for the diocese, and any other trustees holding office under, or in accordance with, this Act, are, by virtue of this subsection, authorised to hold land that is, for the time being, subject to a trust for the use, benefit or purpose of the Anglican Church and of a church of another denomination.

(6) The synod of a diocese has, in relation to land or other property that is, for the time being, subject to a trust for the use, benefit or purpose of the Anglican Church and of a church of another denomination, and the corporate trustees for a diocese, or other trustees, in whom any such land or property is vested, have the like powers in relation to that land or property, as they have under this Act in relation to church trust property.

(7) In the exercise of powers under section 26, by virtue of subsection (6) of this section, the synod of a diocese may make provision for the application of the real and personal property arising from the sale, exchange, letting or other dealing mentioned in section 26 for the use, benefit or purposes of—

- (a) the Anglican Church;
- (b) a church of another denomination; or
- (c) the Anglican Church and a church of another denomination, either jointly or severally.

(8) In the exercise of powers under section 32 by virtue of subsection (6) of this section, the synod of a diocese may declare other trusts, in respect of property, for the use, benefit or purposes of—

- (a) the Anglican Church within the diocese;
- (b) a church of another denomination; or
- (c) the Anglican Church within the diocese and a church of another denomination, either jointly or severally,

instead of the trusts first mentioned in section 32, and the proviso to section 32 shall only apply to and in relation to so much (if any) of the property as is, under the other trusts, to be held for the use, benefit or purposes of the Anglican Church within the diocese.

SCHEDULE 1—AMENDMENTS—*continued*

(9) Subject to subsection (10), the use of the church trust property, and the application of church trust property (including moneys arising from the conversion into money of church trust property), in accordance with an ordinance made under this section, or in accordance with an agreement entered into in accordance with an ordinance made under this section, shall, for all purposes, be deemed to be, and to have been, lawfully used or applied notwithstanding the provisions of any trust upon which the property was or is, or the moneys were or are, held.

(10) Where—

- (a) church trust property, or church trust property from which moneys were derived, was gratuitously granted or assured by a private donor within 20 years before the use or application of the property or moneys in accordance with an ordinance or agreement referred to in subsection (9); and
- (b) the trust instrument (if any) relating to that property expressly forbade the use or application of the property by, or for purposes of, the church of the other denomination concerned, or by, or for such purposes of, a church of a denomination other than the Anglican Church,

subsection (9) does not apply to or in relation to the use or application of the property or moneys in accordance with that ordinance or agreement, unless the donor, if living, has consented to the property or moneys being so used.

(11) In this section, unless the contrary intention appears—

- (a) a reference to the Anglican Church shall be read as a reference to the Anglican Church of Australia;
- (b) a reference to the corporate trustees for a diocese shall be read as including a reference to the bishop of a diocese as trustee of land or other property;
- (c) a reference to the use of property by the Anglican Church shall be read as a reference to the use of property by a diocese, a parish, or a body established by a diocese or parish, including, but without limiting the generality of the foregoing, a body of persons worshipping regularly at a place according to the rites of the Anglican Church;

SCHEDULE 1—AMENDMENTS—*continued*

- (d) a reference to the use of property by a church of another denomination shall be read as a reference to the use of property by any unit of that church, howsoever designated, or by a body established by that church or such a unit, including, but without limiting the generality of the foregoing, a body of persons worshipping regularly at a place according to the rites of that church;
- (e) a reference to a purpose of the Anglican Church shall be read as a reference to a religious, educational or other purpose of a diocese, parish or body referred to in paragraph (c); and
- (f) a reference to a purpose of a church of another denomination shall be read as a reference to a religious, educational or other purpose of a unit or body of that church referred to in paragraph (d).

(3) Section 43 (**Record of ordinances**)—

After “32,” insert “32A, 32B.”

[*Minister's second reading speech made in—
Legislative Assembly on 29 November 1988
Legislative Council on 13 December 1988*]

FIRST PRINT

**ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY
(AMENDMENT) BILL 1988**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Anglican Church of Australia Trust Property Act 1917 (formerly cited as the Church of England Trust Property Act 1917) so as—

- (a) to authorise the synod of a diocese of the Anglican Church in New South Wales to make ordinances authorising the use or acquisition of property jointly by the Anglican Church and a church of another denomination; and
- (b) to make provisions consequential on the joint use or joint ownership of property in these circumstances.

Enactment of the Bill has been requested by an ordinance of the Provincial Synod of the Province of New South Wales of the Anglican Church of Australia.

Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision giving effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Joint use of church trust property

Schedule 1 (2) inserts a new Part 7A (consisting of section 32B) authorising the making of ordinances by the synod of a diocese to deal with the use or acquisition of church property by the Anglican Church and a church of another denomination.

Consequential amendments

Schedule 1 (1) amends section 1 so that the provisions indicating the arrangement of the Act reflect the insertion of the new Part 7A (consisting of section 32B).

Schedule 1 (3) amends section 43 (which deals with the manner in which ordinances

Anglican Church of Australia Trust Property (Amendment) 1988

may be recorded), by inserting a reference to the new section 32B. In the case of both these items, the opportunity has also been taken to insert references to section 32A, by way of statute law revision.

ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY (AMENDMENT) BILL 1988

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Amendment of Anglican Church of Australia Trust Property Act 1917 No. 21
- SCHEDULE 1—AMENDMENTS
-



**ANGLICAN CHURCH OF AUSTRALIA TRUST PROPERTY
(AMENDMENT) BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to make provision with respect to the use of church trust property and ownership thereof pursuant to the Anglican Church of Australia Trust Property Act 1917, and for that purpose and associated purposes to amend that Act; and for other purposes.

Anglican Church of Australia Trust Property (Amendment) 1988

WHEREAS by an Ordinance duly passed by the Provincial Synod of the Province of New South Wales of the Anglican Church of Australia it was ordained and directed that application be made for the enactment of an Act in or to the effect of the provisions herein contained:

5 **The Legislature of New South Wales therefore enacts:**

Short title

1. This Act may be cited as the Anglican Church of Australia Trust Property (Amendment) Act 1988.

10 **Amendment of Anglican Church of Australia Trust Property Act 1917 No. 21**

2. The Anglican Church of Australia Trust Property Act 1917 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 2)

15 (1) Section 1 (**Short title and Parts**)—

Omit the matter relating to Part 7, insert instead:

PART 7—VARIATION OF TRUSTS—ss. 32, 32A

PART 7A—JOINT USE OF CHURCH TRUST PROPERTY—
s. 32B

20 (2) Part 7A—

After Part 7, insert:

PART 7A—JOINT USE OF CHURCH TRUST PROPERTY

Use of property jointly with other churches

25 32B. (1) The synod of a diocese may, by ordinance, make provision, either generally or for a particular case, for and in relation to—

30 (a) the use, by the Anglican Church, of church trust property for a purpose of the Anglican Church and by a church of another denomination for a purpose of that church, jointly or jointly and severally;

(b) the acquisition, by the corporate trustees for the diocese, or by other trustees, of property to be so used; and

(c) the application of moneys vested in—

35 (i) the corporate trustees for the diocese;

(ii) other trustees; or

SCHEDULE 1—AMENDMENTS—*continued*

- (iii) any churchwardens or other persons holding office under an ordinance of the synod, upon trust for the use, benefit or purpose of the Anglican Church in the diocese upon, or in connection with, any specified purpose as defined by subsection (2).
- 5 (2) In subsection (1), “specified purpose” means—
- (a) the acquisition of land or other property by—
- (i) the corporate trustees for the diocese;
- (ii) other trustees on behalf of the Anglican Church; or
- 10 (iii) trustees on behalf of a church of another denomination, to be used by the Anglican Church for a purpose of the Anglican Church and by a church of another denomination for a purpose of that church, jointly, or jointly and severally;
- 15 (b) the erection of a building to be so used; or
- (c) the repair, alteration or maintenance of a building or other property so used, or to be so used.
- (3) Subsection (2) applies to the erection of a building, and to the repair, alteration or maintenance of a building or other property, whether or not the land on which the building is to be erected, or is erected, or whether or not the property, is vested in—
- 20 (a) the corporate trustees for the diocese;
- 25 (b) other trustees on behalf of the Anglican Church; or
- (c) trustees on behalf of a church of another denomination.
- (4) The power of the synod of a diocese to make ordinances under subsection (1) includes power to make ordinances authorising the bishop of the diocese to enter into an agreement with the proper authority of a church of another denomination for the use of land or other property (including church trust property) by the Anglican Church for a purpose of the Anglican Church and by the church of that other denomination for a purpose of that church, jointly, or jointly and severally, and, in connection with that use, for the acquisition of land or other property, for the erection of a building on land or for the repair, alteration or maintenance of a building on land, or of other property, whether or not the land or other property is vested in—
- 30 (a) the corporate trustees for the diocese;
- 35 (b) other trustees on behalf of the Anglican Church; or
- 40

SCHEDULE 1—AMENDMENTS—*continued*

(c) trustees on behalf of the church of that other denomination.

5 (5) The corporate trustees for the diocese, and any other trustees holding office under, or in accordance with, this Act, are, by virtue of this subsection, authorised to hold land that is, for the time being, subject to a trust for the use, benefit or purpose of the Anglican Church and of a church of another denomination.

10 (6) The synod of a diocese has, in relation to land or other property that is, for the time being, subject to a trust for the use, benefit or purpose of the Anglican Church and of a church of another denomination, and the corporate trustees for a diocese, or other trustees, in whom any such land or property is vested, have the like powers in relation to that land or property, as they have under this Act in relation to church trust property.

15 (7) In the exercise of powers under section 26, by virtue of subsection (6) of this section, the synod of a diocese may make provision for the application of the real and personal property arising from the sale, exchange, letting or other dealing mentioned in section 26 for the use, benefit or purposes of—

20 (a) the Anglican Church;

(b) a church of another denomination; or

(c) the Anglican Church and a church of another denomination, either jointly or severally.

25 (8) In the exercise of powers under section 32 by virtue of subsection (6) of this section, the synod of a diocese may declare other trusts, in respect of property, for the use, benefit or purposes of—

(a) the Anglican Church within the diocese;

(b) a church of another denomination; or

30 (c) the Anglican Church within the diocese and a church of another denomination, either jointly or severally,

35 instead of the trusts first mentioned in section 32, and the proviso to section 32 shall only apply to and in relation to so much (if any) of the property as is, under the other trusts, to be held for the use, benefit or purposes of the Anglican Church within the diocese.

SCHEDULE 1—AMENDMENTS—*continued*

(9) Subject to subsection (10), the use of the church trust property, and the application of church trust property (including moneys arising from the conversion into money of church trust property), in accordance with an ordinance made under this section, or in accordance with an agreement entered into in accordance with an ordinance made under this section, shall, for all purposes, be deemed to be, and to have been, lawfully used or applied notwithstanding the provisions of any trust upon which the property was or is, or the moneys were or are, held.

(10) Where—

(a) church trust property, or church trust property from which moneys were derived, was gratuitously granted or assured by a private donor within 20 years before the use or application of the property or moneys in accordance with an ordinance or agreement referred to in subsection (9); and

(b) the trust instrument (if any) relating to that property expressly forbade the use or application of the property by, or for purposes of, the church of the other denomination concerned, or by, or for such purposes of, a church of a denomination other than the Anglican Church, subsection (9) does not apply to or in relation to the use or application of the property or moneys in accordance with that ordinance or agreement, unless the donor, if living, has consented to the property or moneys being so used.

(11) In this section, unless the contrary intention appears—

(a) a reference to the Anglican Church shall be read as a reference to the Anglican Church of Australia;

(b) a reference to the corporate trustees for a diocese shall be read as including a reference to the bishop of a diocese as trustee of land or other property;

(c) a reference to the use of property by the Anglican Church shall be read as a reference to the use of property by a diocese, a parish, or a body established by a diocese or parish, including, but without limiting the generality of the foregoing, a body of persons worshipping regularly at a place according to the rites of the Anglican Church;

(d) a reference to the use of property by a church of another denomination shall be read as a reference to the use of property by any unit of that church, howsoever designated, or by a body established by that church or such a unit, including, but without limiting the generality of the foregoing, a body of persons worshipping regularly at a place according to the rites of that church;

SCHEDULE 1—AMENDMENTS—*continued*

- (e) a reference to a purpose of the Anglican Church shall be read as a reference to a religious, educational or other purpose of a diocese, parish or body referred to in paragraph (c); and
- 5 (f) a reference to a purpose of a church of another denomination shall be read as a reference to a religious, educational or other purpose of a unit or body of that church referred to in paragraph (d).
- (3) Section 43 (**Record of ordinances**)—
- 10 After “32,” insert “32A, 32B,”.



