

**BAPTIST CHURCHES OF NEW SOUTH WALES PROPERTY
TRUST (AMENDMENT) ACT 1992 No. 76**

NEW SOUTH WALES



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**BAPTIST CHURCHES OF NEW SOUTH WALES PROPERTY
TRUST (AMENDMENT) ACT 1992 No. 76**

NEW SOUTH WALES



Act No. 76, 1992

An Act to amend the Baptist Churches of New South Wales Property Trust Act 1984 in relation to the powers of the Baptist Churches of New South Wales Property Trust; and for other purposes. [Assented to 23 November 1992]

Baptist Churches of New South Wales Property Trust (Amendment) Act 1992 No. 76

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Baptist Churches of New South Wales Property Trust (Amendment) Act 1992.

Commencement

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

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

3. The Baptist Churches of New South Wales Property Trust Act 1984 is amended as set out in Schedule 1.

Explanatory notes

4. Matter appearing under the heading "Explanatory note" in Schedule 1 does not form part of this Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 21 (**Powers of the Trust, generally**):

Omit section 21 (1), insert:

(1) Without affecting the generality of section 50 of the Interpretation Act 1987, but subject to this Act, the Trust may acquire, hold, manage, deal with, mortgage, charge or dispose of property of any kind and may borrow or raise or secure the payment of money in such manner as the Trust may think fit and may make, endorse and deal with negotiable instruments of any kind.

Explanatory note

The amendment extends the powers of the Trust under section 21 (2) to expressly include the power to mortgage or charge property, to borrow money and to deal with negotiable instruments.

(2) Section 21A:

After section 21, insert:

SCHEDULE 1—AMENDMENTS—*continued***Certain property held in trust**

21A. (1) The repeal of section 30 (2) by the Baptist Churches of New South Wales Property Trust (Amendment) Act 1992 does not override a declaration by the replacement trustee that the replacement trustee will hold the property upon the same trusts as those under which the Trust held it.

(2) Section 22 applies to the exercise by a replacement trustee of the replacement trustee's functions respecting trust property as if the references to the Trust in that section were references to the replacement trustee.

(3) In this section, "**replacement trustee**" means a body or person appointed, at any time before the commencement of Schedule 1 (7) (b) to the Baptist Churches of New South Wales Property Trust (Amendment) Act 1992, under section 30 (2) (as in force immediately before that commencement) to act as a trustee or as one of the trustees of trust property in place of the Trust.

Explanatory note

The amendment clarifies the duties and powers of a trustee that had, under the provisions of section 30 (2) (which is to be repealed by item (7) of this Schedule), declared that it would hold property upon the same trusts as those upon which the Trust had held the property before the Trust was replaced by the trustee under those provisions.

(3) Section 22 (**Duties and powers of the Trust, generally**):

From section 22 (2) (f), omit "raise money by granting a legal or an equitable mortgage over any trust property or part thereof but, where the property is held on behalf of a congregation", insert instead "borrow or raise money by granting a legal or an equitable mortgage over any trust property or part of trust property or by making, endorsing or dealing with any negotiable instrument but, where the money is borrowed or raised at the direction of a congregation".

Explanatory note

The amendment extends the powers of the Trust in relation to trust property, including trust property held by it on behalf of a congregation, to include the power to borrow or raise money by dealing with negotiable instruments.

SCHEDULE 1—AMENDMENTS—*continued*(4) Section 25 (**Determination of capital and income**):

Omit “Subject to any direction of the Executive Committee for the time being in force in that behalf, the”, insert instead “The”.

Explanatory note

The amendment will enable the Trust to determine whether money vested in it is capital or income and from what money outgoings or losses are to be paid or borne without being subject to any direction of the Executive Committee of the Baptist Union.

(5) Section 26 (**Claims for compensation on compulsory acquisition etc.**):

From section 26, omit “Subject to any by-law or to any direction of the Assembly or of any committee or agency appointed by the Assembly for the purpose of giving directions under this section, the”, insert instead “The”.

Explanatory note

The amendment will enable the Trust to act in relation to the exchange, dedication or compulsory acquisition of any property vested in the Trust and to make resultant claims for compensation without being subject to any by-law or direction of the Assembly, or of a committee or agency appointed by the Assembly.

(6) Section 29A:

After section 29, insert:

Dissolution or dispersal of an organisation

29A. (1) In this section:

“**organisation**” means a society, District Association or other unincorporated association of persons (including a committee or agency of the Baptist Union but not including a congregation) that is or was established in a district in which trust property is situated (or, in the case of a committee or agency of the Baptist Union, that is or was established in New South Wales).

(2) This section applies to an organisation that (whether before or after the commencement of this section):

(a) is dissolved or dispersed so that there are no members meeting in respect of that district for the purposes of the organisation (or, in the case of a committee or agency of the Baptist Union, in New South Wales); or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the case of a District Association, decreases its membership to fewer than 4 Baptist Churches.
- (3) The Baptist Union has and may exercise all of the functions with respect to trust property which an organisation to which this section applies might have exercised before it became an organisation to which this section applies.
- (4) This section ceases to apply to an organisation if:
 - (a) in the case of an organisation referred to in subsection (2) (a)—the organisation is again formed in the district (or, in the case of a committee or agency of the Baptist Union, in New South Wales); or
 - (b) in the case of a District Association—the District Association increases its membership to 4 or more Baptist Churches.
- (5) Subsection (3) does not authorise the Baptist Union to direct the Trust to sell or dispose of (and the Trust must not sell or dispose of) any trust property on behalf of an organisation to which this section applies:
 - (a) if the organisation is dissolved or dispersed, until the expiration of 6 months after the dissolution or dispersal; or
 - (b) if a District Association decreased its membership to fewer than 4 Baptist Churches:
 - (i) until the expiration of a period of 2 years during which the District Association consists of fewer than 4 Baptist Churches; or
 - (ii) unless all members of the District Association consent to the sale or disposition before the expiration of that period.

Explanatory note

The amendment provides for the Baptist Union to exercise any functions with respect to trust property of an organisation that has dissolved, been dispersed or, in the case of a District Association, consists of less than 4 Baptist Churches. "Organisation" is defined to mean a society, District Association or other unincorporated association of persons, but does not include a congregation. Section 29 provides for the dissolution of a congregation.

SCHEDULE 1—AMENDMENTS—*continued*(7) Section 30 (**Power to retire**):

- (a) From section 30 (1), omit “or cease” and “or is”.
- (b) Omit section 30 (2).

Explanatory note

The amendments remove the power of the Trust to cease, of its own motion, to act as trustee in respect of certain property and remove the ability of an individual Baptist Church or District Association to direct the Trust to retire as trustee.

(8) Section 33 (**Construction of certain instruments**):

From section 33 (5) (a), omit “section 29”, insert instead “section 29 or 29A”.

Explanatory note

The amendment is consequential on the amendment made by item (6) of this Schedule. It will have the effect that certain references to a District Association in deeds, wills and other instruments will be read as references to the Trust.

(9) Section 44:

After section 43, insert:

Certain provisions of Associations Incorporation Act 1984 not to apply

44. (1) Schedule 2 to the Associations Incorporation Act 1984 does not apply in relation to trust property.

(2) This section applies to an association which was incorporated before or after the commencement of Schedule 1 (9) to the Baptist Churches of New South Wales Property Trust (Amendment) Act 1992.

Explanatory note

Schedule 2 to the Associations Incorporation Act 1984 provides for the assets of a body incorporated under the Act to form an incorporated association to vest in the incorporated association. “Assets” is defined as meaning 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. The amendment will exclude the operation of those provisions in relation to trust property. The effect is that if a body for which property is held in trust by the Trust is incorporated under the Associations Incorporation Act 1984 no assets will be transferred to the incorporated body.

SCHEDULE 1—AMENDMENTS—*continued*

(10) Section 45:

Before Schedule 1, insert:

Savings, transitional and other provisions

45. Schedule 3 has effect.

(11) Schedule 3:

After Schedule 2, insert

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS**

(Sec. 45)

Power to retire

Section 30 (2), as in force immediately before it was repealed by Schedule 1 (7) (b) to the Baptist Churches of New South Wales Property Trust (Amendment) Act 1992, continues to have effect in relation to a direction given to the Trust under that subsection before its repeal and that had not been complied with as if that subsection were still in force.

Explanatory note

Section 30 (2) permits a Baptist Church or District Association for which any trust property is held by the Trust to direct the Trust to retire as trustee of that property. That subsection is to be repealed by Schedule 1 (7) (b). The amendment inserts a provision of a transitional nature to cover the situation where a Church or Association had directed the Trust to retire while section 30 (2) was still in force but the process of replacing the Trust had not been completed before the repeal of that section took effect (whether because the Church or Association had not appointed a replacement trustee, because the replacement trustee had not declared that it would hold the property on trust or because the Trust had not complied with the direction by retiring). The transitional provision will ensure that in such a case the Trust must comply with the direction to retire as if section 30 (2) had not been repealed.

*[Minister's second reading speech made in—
Legislative Assembly on 15 October 1992
Legislative Council on 17 November 1992]*