



New South Wales

Presbyterian Church (Corporations) Act 1995 No 67

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New South Wales

Presbyterian Church (Corporations) Act 1995 No 67

Act No 67, 1995

An Act to constitute the Presbyterian Church (NSW) Superannuation Corporation and to specify its functions; to provide for the constitution of other corporations for the purposes of managing, governing and controlling institutions and organisations of the Presbyterian Church; to repeal an Act relating to the Beneficiary Fund of the Presbyterian Church; to amend *The Presbyterian Church (New South Wales) Property Trust Act 1936*; and for other purposes. [Assented to 12 December 1995]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Presbyterian Church (Corporations) Act 1995*.

2 Commencement

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

3 Definitions

In this Act:

Beneficiary Fund means the fund referred to in the Beneficiary Fund Act.

Beneficiary Fund Act means the Act repealed by section 24.

Beneficiary Fund Committee means the committee appointed by the General Assembly under section 3 of the Beneficiary Fund Act to administer the Beneficiary Fund.

by-laws means the by-laws made by the General Assembly under section 21 and in force for the time being.

corporation means a corporation constituted under this Act.

exercise a function includes perform a duty.

function includes a power, authority or duty.

General Assembly means the General Assembly for the time being of the Presbyterian Church of Australia in the State of New South Wales.

Property Trust means The Presbyterian Church (New South Wales) Property Trust constituted under the Property Trust Act.

Property Trust Act means *The Presbyterian Church (New South Wales) Property Trust Act 1936*.

Superannuation Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

Superannuation Corporation means the Presbyterian Church (NSW) Superannuation Corporation constituted by this Act.

Superannuation Fund means the Presbyterian Church (NSW) Superannuation Fund maintained under this Act.

the Church means the Presbyterian Church of Australia to the extent that the General Assembly has jurisdiction in relation to it.

unincorporated body of the Church means:

- (a) any council, committee, or board appointed (either before or after the commencement of section 7) by the General Assembly under section 13 of the Property Trust Act to carry on any activities or projects of the Church, or
- (b) any other body established for the purpose of an activity, fund, service, institution or interest of the Church generally or a congregation of the Church.

Part 2 Corporations

Division 1 Superannuation Corporation

4 Constitution of Superannuation Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Presbyterian Church (NSW) Superannuation Corporation.
- (2) The Superannuation Corporation is to consist of such members as are elected in accordance with the by-laws. Until the first such election is held, the Superannuation Corporation is to consist of those persons who, immediately before the commencement of this section, were members of the Beneficiary Fund Committee.

5 Presbyterian Church (NSW) Superannuation Fund

- (1) The Superannuation Corporation is to maintain a fund to be called the Presbyterian Church (NSW) Superannuation Fund.
- (2) The Superannuation Fund is to include the property that, immediately before the commencement of this Division, was vested in the Property Trust on account of the Beneficiary Fund.
- (3) The Superannuation Fund is a continuation of the Beneficiary Fund.

6 Functions of Superannuation Corporation

- (1) The functions of the Superannuation Corporation are:
 - (a) to maintain and manage the Superannuation Fund, and
 - (b) to do and suffer all other things that corporations may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act, the Superannuation Act or any other law, and
 - (c) such other functions as are conferred or imposed on it by or under this Act or any other law.

- (2) This section does not limit section 50 of the *Interpretation Act 1987*.

Division 2 Other corporations

7 Power to constitute corporations

- (1) The General Assembly may, by resolution, declare that an unincorporated body of the Church named in the resolution should be constituted as a corporation under the name set out in the resolution.
- (2) If the unincorporated body of the Church named in the resolution is a body established for the purpose of an activity, fund, service, institution or interest of a congregation of the Church, the General Assembly must not pass a resolution under subsection (1) unless the congregation consents to the resolution in the manner provided under section 12 of the Property Trust Act.
- (3) If such a resolution is passed, the Governor may, by proclamation, declare that the unincorporated body of the Church named in the resolution is constituted as a corporation.
- (4) On and from the date of such proclamation (or from such later date as may be specified in the proclamation), the unincorporated body named in the proclamation is by the proclamation constituted as a corporation under the corporate name set out in the proclamation.

8 Power to dissolve corporations

- (1) The General Assembly may, by resolution, declare that a corporation constituted under this Division should be dissolved.
- (2) If such a resolution is passed, the Governor may, by proclamation, declare that the corporation named in the resolution is dissolved.
- (3) On and from the date of such proclamation (or from such later date as may be specified in the proclamation), the corporation named in the proclamation is dissolved.

9 Functions of corporations

A corporation constituted under this Division may exercise the functions conferred or imposed by the General Assembly on:

- (a) the corporation, or
- (b) the unincorporated body of the Church that was constituted as the corporation.

Division 3 General provisions relating to corporations

10 General functions of corporations

Sections 10, 10A, 10B, 12, 14, 15, 19, 20, 21, 21A, 21B and 23 of the Property Trust Act apply in respect of a corporation in the same way as those sections apply to the Property Trust under the Property Trust Act.

11 Delegation of functions

A corporation may delegate any of its functions (other than this power of delegation) to:

- (a) any member of the corporation, or
- (b) any other person or body prescribed by the by-laws.

12 Membership and procedure of corporations

Schedule 1 has effect with respect to the membership and procedure of a corporation.

13 Transfer of assets, rights and liabilities

Schedule 2 has effect.

Part 3 Administrative provisions

14 Common seal

- (1) The seal of a corporation is to be kept by an officer of the corporation in safe custody, and is to be affixed to a document only:
 - (a) in accordance with a resolution of the corporation, and
 - (b) in the presence of not fewer than 3 members of the corporation, and
 - (c) with an attestation by the signatures of those members of the fact of the affixing of the seal.
- (2) An instrument purporting to have been sealed with the seal of the corporation and to have been signed by not fewer than 3 members of the corporation is taken to have been executed in accordance with this section.

15 Execution under seal by agent

- (1) A corporation may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed, instrument, contract or agreement on its behalf as its agent or attorney.
- (2) Any deed signed by such an agent or attorney under his or her seal on behalf of a corporation binds the corporation and has the same effect as if it were under the seal of the corporation.

16 Evidence

- (1) A certificate under the seal of a corporation to the effect that property specified in the certificate is vested in the corporation in trust for:
 - (a) the Church generally, or
 - (b) any congregation of the Church, or
 - (c) the purposes of an activity, fund, service, institution or interest of the Church,is, in any legal proceedings, prima facie evidence of the matters so certified.

- (2) A certificate under the seal of a corporation to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the corporation by this Act is, for the purposes of any application by the corporation to be registered under the *Real Property Act 1900* as the proprietor of that estate or interest pursuant to the vesting, prima facie evidence of the matters so certified.

17 Receipt for certain money

A receipt for money paid to a corporation that:

- (a) is executed under the seal of the corporation, or
- (b) is in writing signed by not less than 3 members of the corporation, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the corporation,

exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.

18 Exoneration from inquiry

If a corporation acquires, disposes of or otherwise deals with property, it is not necessary for:

- (a) any other person who is a party to any such dealing, or
- (b) the Registrar-General or any other person registering or certifying title to the property,

to inquire whether the corporation has power to so deal with the property.

19 Indemnification of certain persons

- (1) The following persons are entitled to be indemnified out of property vested in a corporation (other than the Superannuation Corporation) against all expenses and liabilities incurred in the exercise of a function in good faith in relation to property vested in the corporation in accordance with this Act or any by-law:
- (a) a member of the corporation and any other person exercising such a function,
 - (b) the executor or administrator of any such member or person.

- (2) In the case of the Superannuation Fund, a person is only entitled to be indemnified in relation to property vested in the Superannuation Fund to the extent permitted by the Superannuation Act.

20 Service of documents

Any document may be served on a corporation by delivering it to, or sending it by post to, the secretary of the corporation, or any person appearing to be authorised by the corporation to accept service.

21 By-laws

- (1) The General Assembly may make by-laws for or with respect to the following matters:
- (a) the control, management and administration of, and dealings with, property vested in a corporation,
 - (b) the manner in which a corporation is constituted,
 - (c) the affairs of the corporation.
- (2) Without limiting the generality of subsection (1), the General Assembly may make by-laws:
- (a) to change the name of the corporation (other than the Superannuation Corporation), and
 - (b) to fix the number of members of the corporation, and
 - (c) to prescribe the methods of election, appointment and retirement of such members, and
 - (d) to prescribe the circumstances in which a vacancy in the office of any such member is taken to occur and how it is to be filled.
- (3) A by-law must be consistent with this Act and with the Superannuation Act.
- (4) A certificate under the seal of the corporation to the effect that a by-law specified in the certificate was in force on a day specified in the certificate is prima facie evidence that the by-law was in force on that day.
- (5) A by-law may be amended or repealed by a subsequent by-law made under this section.
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Part 4 Miscellaneous

22 Amendment of The Presbyterian Church (New South Wales) Property Trust Act 1936

The Property Trust Act is amended by inserting after section 21B the following section:

21C Delegation of functions

The Trustees may delegate any of their functions (other than this power of delegation) to any person or body.

23 Amendment of Presbyterian Church of Australia Act 1971 No 42

The *Presbyterian Church of Australia Act 1971* is amended by omitting sections 1 (2), 3, 5 and 7-9, and Parts 1 and 2 of the Schedule.

24 Repeal of Act relating to the Beneficiary Fund of the Presbyterian Church of Australia in New South Wales

The Act entitled "An Act to validate certain arrangements, acts, and regulations heretofore entered into, done and made, relating to the Beneficiary Fund of the Presbyterian Church of Australia in the State of New South Wales, and to confer upon the General Assembly of the said Church power to regulate and control the said Fund in all respects, including membership, basis or rate of contribution, and other conditions of the same, and to extend the benefits of the said Fund to persons not resident in the said State; and for other incidental purposes", assented to on 5 April 1929, is repealed.

Schedule 1 Provisions relating to membership and procedure of corporations

(Section 12)

1 Term of office of members

Subject to this Schedule, a member of a corporation holds office for such period as may be specified in the by-laws, but is eligible (if otherwise qualified) for reappointment.

2 Filling of vacancy in office of member

If the office of any member of a corporation becomes vacant, a person is to be appointed to fill the vacancy in accordance with the by-laws.

3 Casual vacancies

The office of a member of a corporation becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by instrument in writing addressed to the corporation, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is absent from 3 consecutive meetings of the corporation of which reasonable notice has been given to the member, except on leave granted by the corporation or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the corporation for having been absent from the meetings, or

- (h) in the case of the Superannuation Corporation, becomes a disqualified person referred to in Part 15 of the Superannuation Act.

4 Conflict of interests

- (1) If:

- (a) a member of a corporation has an interest in a matter being considered or about to be considered at a meeting of the corporation, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the corporation.

- (2) A disclosure by a member at a meeting of the corporation that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by a corporation in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (4) After a member of a corporation has disclosed the nature of an interest in any matter, the member must not, unless the corporation otherwise determines:

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- (a) be present during any deliberation of the corporation with respect to the matter, or
 - (b) take part in any decision of the corporation with respect to the matter.
 - (5) For the purpose of the making of a determination by a corporation under subclause (4), a member of a corporation who has an interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the corporation for the purpose of making the determination, or
 - (b) take part in the making by the corporation of the determination.
 - (6) A contravention of this clause does not invalidate any decision of the corporation.

5 Personal liability of members etc

A matter or thing done by a corporation, a member of a corporation or any person acting under the direction of a corporation does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

6 General procedure

- (1) The procedure for the calling of meetings of a corporation and for the conduct of business at those meetings is, subject to this Schedule, to be as determined by the corporation.
- (2) The Clerk of the General Assembly is to call the first meeting of a corporation in such manner as it thinks fit.

7 Quorum

- (1) The quorum for a meeting of a corporation (other than the Superannuation Corporation) is one-third of the members for the time being of the corporation.

Schedule 1 Provisions relating to membership and procedure of corporations

- (2) The quorum for a meeting of the Superannuation Corporation is two-thirds of the members for the time being of the corporation.
- (3) Every meeting at which a quorum is present is competent to transact any business of the corporation.

8 Presiding member

- (1) A member of a corporation elected to chair a meeting of the corporation by the members present is to preside at the meeting.
- (2) The member presiding at a meeting of a corporation (other than the Superannuation Corporation) has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (3) The member presiding at a meeting of the Superannuation Corporation has a deliberative vote.

9 Voting

- (1) A decision supported by a majority of the votes cast at a meeting of a corporation (other than the Superannuation Corporation) at which a quorum is present is a decision of the corporation.
- (2) In the case of the Superannuation Corporation, a decision supported by a two-thirds majority of the votes cast at a meeting of the corporation at which a quorum is present is a decision of the corporation.

10 Minutes

A corporation must cause full and accurate minutes to be kept of the proceedings of each meeting of the corporation.

11 Superannuation Act not affected

In the case of the Superannuation Corporation, nothing in this Schedule affects the operation of any provision of the Superannuation Act applying to the Superannuation Corporation.

Schedule 2 Transfer of assets, rights and liabilities

(Section 13)

1 Definitions

In this Schedule:

assets 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.

conveyance includes transfer, assignment and assurance.

instrument 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 judgment, order or process of a court.

liabilities means all liabilities, debts or obligations (whether present or future and whether vested or contingent).

2 Transfer of certain assets, rights and liabilities to Superannuation Corporation

On the commencement of Division 1 of Part 2 of this Act, all assets vested in the Property Trust on account of the Beneficiary Fund, and the rights and liabilities (if any) of the Property Trust in relation to that Fund, are transferred to the Superannuation Corporation and the following provisions have effect:

- (a) those assets vest in the Superannuation Corporation by virtue of this clause and without the need for any conveyance,
- (b) those rights and liabilities become the rights and liabilities of the Superannuation Corporation,
- (c) all proceedings relating to those assets, rights and liabilities commenced before the transfer by or against the Property Trust and pending immediately before the transfer are taken to be proceedings pending by or against the Superannuation Corporation,

Schedule 2 Transfer of assets, rights and liabilities

- (d) any act, matter or thing relating to those assets, rights and liabilities done or omitted to be done before the transfer by, to or in respect of the Property Trust is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Superannuation Corporation,
- (e) a reference in any instrument of any kind to the Property Trust (in so far as it relates to those assets, rights and liabilities) is to be read as a reference to the Superannuation Corporation.

3 Transfer of assets, rights and liabilities of unincorporated bodies of the Church

- (1) On the day on which a corporation is constituted under Division 2 of Part 2 of this Act, the following provisions have effect:
 - (a) any assets of the unincorporated body that is incorporated (including those assets vested in the Property Trust in trust for the unincorporated body) vest in the corporation so constituted by virtue of this clause without the need for any conveyance,
 - (b) the rights and liabilities of the unincorporated body become the rights and liabilities of the corporation so constituted,
 - (c) all proceedings commenced before that day by or against the unincorporated body and pending immediately before that day are taken to be proceedings pending by or against the corporation so constituted,
 - (d) any act, matter or thing relating to those assets, rights and liabilities done or omitted to be done before that day by, to or in respect of the unincorporated body is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the corporation so constituted,
 - (e) a reference in any instrument of any kind to the unincorporated body is to be read as a reference to the corporation so constituted.

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- (2) Assets vesting in a corporation by virtue of this Schedule are not to be dealt with contrary to the provisions of any trust affecting the assets immediately before the constitution of the corporation (being provisions as to the purposes for which the assets may or are required to be applied).
 - (3) No attornment to the corporation by any lessee of land vested in the corporation by the operation of this clause is required.

4 Transfer of assets etc of dissolved corporations

- (1) On the date on which a proclamation under section 8 takes effect to dissolve a corporation, the assets, rights and liabilities (if any) of the dissolved corporation are transferred to the Property Trust and the following provisions have effect:
 - (a) the assets of the dissolved corporation vest in the Property Trust by virtue of this clause without the need for any conveyance,
 - (b) the rights and liabilities of the dissolved corporation become the rights and liabilities of the Property Trust,
 - (c) all proceedings commenced before that day by or against the dissolved corporation and pending immediately before that day are taken to be proceedings pending by or against the Property Trust,
 - (d) any act, matter or thing relating to those assets, rights or liabilities done or omitted to be done before that day by, to or in respect of the dissolved corporation is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Property Trust,
 - (e) a reference in any instrument of any kind to the dissolved corporation is to be read as a reference to the Property Trust.
- (2) No attornment to the Property Trust by a lessee from the dissolved corporation is required.

5 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other agreement.

6 Stamp duty

Stamp duty is not chargeable in respect of the transfer of assets, rights and liabilities to a corporation (including the Property Trust) under this Schedule.

[Minister's second reading speech made in—
Legislative Council on 16 November 1995
Legislative Assembly on 7 December 1995]

BY AUTHORITY

First print



New South Wales

Presbyterian Church (Corporations) Bill 1995

Explanatory note

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

Overview of Bill

The Presbyterian Church (New South Wales) Property Trust currently holds property in trust for the Presbyterian Church in New South Wales. Some of that property is vested in the Property Trust on account of the Beneficiary Fund which was established to provide retirement benefits to ministers of the Church.

The *Superannuation Industry (Supervision) Act 1993* of the Commonwealth ("the Superannuation Act") has been enacted to regulate the superannuation industry. In order for the Beneficiary Fund to be regulated for the purposes of the Superannuation Act (and obtain consequent tax concessions), the trustee of the fund must be a constitutional corporation within the meaning of that Act. As the Property Trust is not a constitutional corporation, new arrangements must be made to enable the Church's superannuation fund to come within the Commonwealth scheme.

The objects of this Bill are:

- to constitute a statutory corporation whose function is to maintain and manage a superannuation fund for ministers of the Church, and
- to provide for other unincorporated institutions and organisations of the Church to be incorporated.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Corporations

Clause 4 constitutes a statutory corporation called the Presbyterian Church (NSW) Superannuation Corporation. The members of the Superannuation Corporation are to be elected in accordance with the by-laws made by the General Assembly of the Church.

Clause 5 requires the Superannuation Corporation to maintain a Superannuation Fund. The Superannuation Fund is to include the property previously held by the Property Trust on account of the Beneficiary Fund. The Superannuation Fund is a continuation of the Beneficiary Fund.

Clause 6 specifies the functions of the Superannuation Corporation. These include:

- (a) maintaining and managing the Superannuation Fund, and
- (b) doing all things necessary or incidental to maintaining and managing the Superannuation Fund. This includes complying with the requirements of all laws, including the Superannuation Act.

Clause 7 provides for unincorporated Church bodies to be incorporated as statutory corporations. The General Assembly of the Church may resolve that an unincorporated body of the Church, such as a committee or a body established for the purpose of an activity of the Church, is to be constituted as a corporation. Once the General Assembly has passed such a resolution, the Governor may declare by proclamation that the unincorporated body is constituted as a corporation.

Clause 8 provides for the dissolution of such a corporation.

Clause 9 provides that a corporation may exercise functions conferred by the General Assembly on the corporation, or on the unincorporated body that was constituted as the corporation.

Clause 10 provides that certain provisions of *The Presbyterian Church (New South Wales) Property Trust Act 1936* also apply to corporations constituted under the proposed Act. The applicable provisions concern the powers and obligations of corporations, and the authority of the General Assembly in relation to corporations.

Clause 11 empowers a corporation to delegate its functions to any member of the corporation or any other person or body prescribed by the by-laws.

Clause 12 gives effect to Schedule 1 which contains provisions relating to the membership and procedure of corporations.

Clause 13 gives effect to Schedule 2 which contains provisions relating to the transfer of assets, rights and liabilities in respect of the Beneficiary Fund and unincorporated bodies of the Church.

Part 3 Administrative provisions

Clause 14 describes the procedure for affixing the seal of a corporation to documents, and provides for the custody of the seal.

Clause 15 enables a corporation to appoint a person to execute documents on its behalf.

Clause 16 enables a corporation to certify that it holds property in trust for the Church, a particular congregation of the Church or a charitable purpose of the Church.

Clause 17 provides that if a person obtains a receipt for money paid on behalf of a corporation, the person will not be liable if the money is lost or misapplied.

Clause 18 provides that a person involved in a property dealing with a corporation need not question whether the corporation has power to deal with the property.

Clause 19 entitles members of a corporation and others to be indemnified against liability for things done by them in good faith concerning the property.

Clause 20 describes how documents are to be served on a corporation.

Clause 21 confers a power on the General Assembly of the Church to make by-laws regulating a corporation and the property vested in the corporation.

Part 4 Miscellaneous

Clause 22 amends *The Presbyterian Church (New South Wales) Property Trust Act 1936* so as to confer a power of delegation on the trustees of the Property Trust similar to the delegation power conferred on a corporation by proposed section 11.

Clause 23 repeals certain provisions of the *Presbyterian Church of Australia Act 1971* that have either not been commenced or have no further operation.

Clause 24 repeals an Act that validated the amalgamation of certain Church funds into a single Beneficiary Fund for the purpose of providing for ministers of the Church in their old age.

Schedules

Schedule 1 contains provisions relating to the membership and procedure of the Superannuation Corporation and other corporations constituted under the proposed Act.

Schedule 2 provides for the transferring of assets, rights and liabilities to a corporation. In particular, the property vested in the Property Trust on account of the Beneficiary Fund is vested in the Superannuation Corporation. If an unincorporated body of the Church is constituted under the proposed Act as a corporation, any property held by the Property Trust in trust for the unincorporated body is vested in the corporation so constituted.



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No , 1995

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Beneficiary Fund Committee means the committee appointed by the General Assembly under section 3 of the Beneficiary Fund Act to administer the Beneficiary Fund. 15

by-laws means the by-laws made by the General Assembly under section 21 and in force for the time being.

corporation means a corporation constituted under this Act.

exercise a function includes perform a duty.

function includes a power, authority or duty. 20

General Assembly means the General Assembly for the time being of the Presbyterian Church of Australia in the State of New South Wales.

Property Trust means The Presbyterian Church (New South Wales) Property Trust constituted under the Property Trust Act. 25

Property Trust Act means *The Presbyterian Church (New South Wales) Property Trust Act 1936*.

Superannuation Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

Superannuation Corporation means the Presbyterian Church (NSW) Superannuation Corporation constituted by this Act.

Superannuation Fund means the Presbyterian Church (NSW) Superannuation Fund maintained under this Act. 5

the Church means the Presbyterian Church of Australia to the extent that the General Assembly has jurisdiction in relation to it.

unincorporated body of the Church means:

- (a) any council, committee, or board appointed (either before or after the commencement of section 7) by the General Assembly under section 13 of the Property Trust Act to carry on any activities or projects of the Church, or 10
- (b) any other body established for the purpose of an activity, fund, service, institution or interest of the Church generally or a congregation of the Church. 15

Part 2 Corporations

Division 1 Superannuation Corporation

4 Constitution of Superannuation Corporation

- (1) There is constituted by this Act a corporation with the corporate name of the Presbyterian Church (NSW) Superannuation Corporation. 5
- (2) The Superannuation Corporation is to consist of such members as are elected in accordance with the by-laws. Until the first such election is held, the Superannuation Corporation is to consist of those persons who, immediately before the commencement of this section, were members of the Beneficiary Fund Committee. 10

5 Presbyterian Church (NSW) Superannuation Fund

- (1) The Superannuation Corporation is to maintain a fund to be called the Presbyterian Church (NSW) Superannuation Fund.
- (2) The Superannuation Fund is to include the property that, immediately before the commencement of this Division, was vested in the Property Trust on account of the Beneficiary Fund. 15
- (3) The Superannuation Fund is a continuation of the Beneficiary Fund.

6 Functions of Superannuation Corporation 20

- (1) The functions of the Superannuation Corporation are:
 - (a) to maintain and manage the Superannuation Fund, and
 - (b) to do and suffer all other things that corporations may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act, the Superannuation Act or any other law, and 25
 - (c) such other functions as are conferred or imposed on it by or under this Act or any other law.
- (2) This section does not limit section 50 of the *Interpretation Act 1987*. 30

Division 2 Other corporations

7 Power to constitute corporations

- (1) The General Assembly may, by resolution, declare that an unincorporated body of the Church named in the resolution should be constituted as a corporation under the name set out in the resolution. 5
- (2) If the unincorporated body of the Church named in the resolution is a body established for the purpose of an activity, fund, service, institution or interest of a congregation of the Church, the General Assembly must not pass a resolution under subsection (1) unless the congregation consents to the resolution in the manner provided under section 12 of the Property Trust Act. 10
- (3) If such a resolution is passed, the Governor may, by proclamation, declare that the unincorporated body of the Church named in the resolution is constituted as a corporation. 15
- (4) On and from the date of such proclamation (or from such later date as may be specified in the proclamation), the unincorporated body named in the proclamation is by the proclamation constituted as a corporation under the corporate name set out in the proclamation. 20

8 Power to dissolve corporations

- (1) The General Assembly may, by resolution, declare that a corporation constituted under this Division should be dissolved.
- (2) If such a resolution is passed, the Governor may, by proclamation, declare that the corporation named in the resolution is dissolved. 25
- (3) On and from the date of such proclamation (or from such later date as may be specified in the proclamation), the corporation named in the proclamation is dissolved.

9 Functions of corporations

A corporation constituted under this Division may exercise the functions conferred or imposed by the General Assembly on:

- (a) the corporation, or
- (b) the unincorporated body of the Church that was constituted as the corporation. 35

Division 3 General provisions relating to corporations

10 General functions of corporations

Sections 10, 10A, 10B, 12, 14, 15, 19, 20, 21, 21A, 21B and 23 of the Property Trust Act apply in respect of a corporation in the same way as those sections apply to the Property Trust under the Property Trust Act. 5

11 Delegation of functions

A corporation may delegate any of its functions (other than this power of delegation) to:

- (a) any member of the corporation, or 10
- (b) any other person or body prescribed by the by-laws.

12 Membership and procedure of corporations

Schedule 1 has effect with respect to the membership and procedure of a corporation.

13 Transfer of assets, rights and liabilities 15

Schedule 2 has effect.

Part 3 Administrative provisions

14 Common seal

- (1) The seal of a corporation is to be kept by an officer of the corporation in safe custody, and is to be affixed to a document only:
 - (a) in accordance with a resolution of the corporation, and
 - (b) in the presence of not fewer than 3 members of the corporation, and
 - (c) with an attestation by the signatures of those members of the fact of the affixing of the seal.
- (2) An instrument purporting to have been sealed with the seal of the corporation and to have been signed by not fewer than 3 members of the corporation is taken to have been executed in accordance with this section.

15 Execution under seal by agent

- (1) A corporation may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed, instrument, contract or agreement on its behalf as its agent or attorney.
- (2) Any deed signed by such an agent or attorney under his or her seal on behalf of a corporation binds the corporation and has the same effect as if it were under the seal of the corporation.

16 Evidence

- (1) A certificate under the seal of a corporation to the effect that property specified in the certificate is vested in the corporation in trust for:
 - (a) the Church generally, or
 - (b) any congregation of the Church, or
 - (c) the purposes of an activity, fund, service, institution or interest of the Church,
 is, in any legal proceedings, prima facie evidence of the matters so certified.

- (2) A certificate under the seal of a corporation to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the corporation by this Act is, for the purposes of any application by the corporation to be registered under the *Real Property Act 1900* as the proprietor of that estate or interest pursuant to the vesting, prima facie evidence of the matters so certified. 5

17 Receipt for certain money

A receipt for money paid to a corporation that:

- (a) is executed under the seal of the corporation, or 10
- (b) is in writing signed by not less than 3 members of the corporation, or
- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the corporation,

exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money. 15

18 Exoneration from inquiry

If a corporation acquires, disposes of or otherwise deals with property, it is not necessary for: 20

- (a) any other person who is a party to any such dealing, or
- (b) the Registrar-General or any other person registering or certifying title to the property,

to inquire whether the corporation has power to so deal with the property. 25

19 Indemnification of certain persons

- (1) The following persons are entitled to be indemnified out of property vested in a corporation (other than the Superannuation Corporation) against all expenses and liabilities incurred in the exercise of a function in good faith in relation to property vested in the corporation in accordance with this Act or any by-law: 30
- (a) a member of the corporation and any other person exercising such a function,
 - (b) the executor or administrator of any such member or person. 35

- (2) In the case of the Superannuation Fund, a person is only entitled to be indemnified in relation to property vested in the Superannuation Fund to the extent permitted by the Superannuation Act.

20 Service of documents

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Any document may be served on a corporation by delivering it to, or sending it by post to, the secretary of the corporation, or any person appearing to be authorised by the corporation to accept service.

21 By-laws

10

- (1) The General Assembly may make by-laws for or with respect to the following matters:
- (a) the control, management and administration of, and dealings with, property vested in a corporation,
 - (b) the manner in which a corporation is constituted,
 - (c) the affairs of the corporation.
- (2) Without limiting the generality of subsection (1), the General Assembly may make by-laws:
- (a) to change the name of the corporation (other than the Superannuation Corporation), and
 - (b) to fix the number of members of the corporation, and
 - (c) to prescribe the methods of election, appointment and retirement of such members, and
 - (d) to prescribe the circumstances in which a vacancy in the office of any such member is taken to occur and how it is to be filled.
- (3) A by-law must be consistent with this Act and with the Superannuation Act.
- (4) A certificate under the seal of the corporation to the effect that a by-law specified in the certificate was in force on a day specified in the certificate is prima facie evidence that the by-law was in force on that day.
- (5) A by-law may be amended or repealed by a subsequent by-law made under this section.

Part 4 Miscellaneous

22 Amendment of The Presbyterian Church (New South Wales) Property Trust Act 1936

The Property Trust Act is amended by inserting after
section 21B the following section: 5

21C Delegation of functions

The Trustees may delegate any of their functions
(other than this power of delegation) to any person or
body.

23 Amendment of Presbyterian Church of Australia Act 1971 No 42 10

The *Presbyterian Church of Australia Act 1971* is amended by
omitting sections 1 (2), 3, 5 and 7-9, and Parts 1 and 2 of the
Schedule.

24 Repeal of Act relating to the Beneficiary Fund of the Presbyterian Church of Australia in New South Wales 15

The Act entitled "An Act to validate certain arrangements, acts,
and regulations heretofore entered into, done and made, relating
to the Beneficiary Fund of the Presbyterian Church of Australia
in the State of New South Wales, and to confer upon the General
Assembly of the said Church power to regulate and control the 20
said Fund in all respects, including membership, basis or rate of
contribution, and other conditions of the same, and to extend the
benefits of the said Fund to persons not resident in the said State;
and for other incidental purposes", assented to on 5 April 1929, 25
is repealed.

Schedule 1 Provisions relating to membership and procedure of corporations

(Section 12)

1 Term of office of members

Subject to this Schedule, a member of a corporation holds office 5
for such period as may be specified in the by-laws, but is eligible
(if otherwise qualified) for reappointment.

2 Filling of vacancy in office of member

If the office of any member of a corporation becomes vacant, a 10
person is to be appointed to fill the vacancy in accordance with
the by-laws.

3 Casual vacancies

The office of a member of a corporation becomes vacant if the
member:

- (a) dies, or 15
- (b) completes a term of office and is not reappointed, or
- (c) resigns the office by instrument in writing addressed to
the corporation, or
- (d) becomes bankrupt, applies to take the benefit of any law
for the relief of bankrupt or insolvent debtors, compounds 20
with his or her creditors or makes an assignment of his or
her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is
punishable by penal servitude or imprisonment for 12 25
months or more or is convicted elsewhere than in New
South Wales of an offence that, if committed in New
South Wales, would be an offence so punishable, or
- (g) is absent from 3 consecutive meetings of the corporation
of which reasonable notice has been given to the member, 30
except on leave granted by the corporation or unless,
before the expiration of 4 weeks after the last of those
meetings, the member is excused by the corporation for
having been absent from the meetings, or

- (h) in the case of the Superannuation Corporation, becomes a disqualified person referred to in Part 15 of the Superannuation Act.

4 Conflict of interests

- (1) If: 5
 - (a) a member of a corporation has an interest in a matter being considered or about to be considered at a meeting of the corporation, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, 10

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the corporation.
- (2) A disclosure by a member at a meeting of the corporation that the member: 15
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or 20
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1). 25
- (3) Particulars of any disclosure made under this clause must be recorded by a corporation in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person. 30
- (4) After a member of a corporation has disclosed the nature of an interest in any matter, the member must not, unless the corporation otherwise determines:

-
- (a) be present during any deliberation of the corporation with respect to the matter, or
- (b) take part in any decision of the corporation with respect to the matter.
- (5) For the purpose of the making of a determination by a corporation under subclause (4), a member of a corporation who has an interest in a matter to which the disclosure relates must not: 5
- (a) be present during any deliberation of the corporation for the purpose of making the determination, or 10
- (b) take part in the making by the corporation of the determination.
- (6) A contravention of this clause does not invalidate any decision of the corporation.

5 Personal liability of members etc

15

A matter or thing done by a corporation, a member of a corporation or any person acting under the direction of a corporation does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand. 20

6 General procedure

- (1) The procedure for the calling of meetings of a corporation and for the conduct of business at those meetings is, subject to this Schedule, to be as determined by the corporation. 25
- (2) The Clerk of the General Assembly is to call the first meeting of a corporation in such manner as it thinks fit.

7 Quorum

- (1) The quorum for a meeting of a corporation (other than the Superannuation Corporation) is one-third of the members for the time being of the corporation. 30

Presbyterian Church (Corporations) Bill 1995

Schedule 1 Provisions relating to membership and procedure of corporations

- (2) The quorum for a meeting of the Superannuation Corporation is two-thirds of the members for the time being of the corporation.
- (3) Every meeting at which a quorum is present is competent to transact any business of the corporation.

8 Presiding member

5

- (1) A member of a corporation elected to chair a meeting of the corporation by the members present is to preside at the meeting.
- (2) The member presiding at a meeting of a corporation (other than the Superannuation Corporation) has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 10
- (3) The member presiding at a meeting of the Superannuation Corporation has a deliberative vote.

9 Voting

- (1) A decision supported by a majority of the votes cast at a meeting of a corporation (other than the Superannuation Corporation) at which a quorum is present is a decision of the corporation. 15
- (2) In the case of the Superannuation Corporation, a decision supported by a two-thirds majority of the votes cast at a meeting of the corporation at which a quorum is present is a decision of the corporation. 20

10 Minutes

A corporation must cause full and accurate minutes to be kept of the proceedings of each meeting of the corporation.

11 Superannuation Act not affected

In the case of the Superannuation Corporation, nothing in this Schedule affects the operation of any provision of the Superannuation Act applying to the Superannuation Corporation. 25

Schedule 2 Transfer of assets, rights and liabilities

(Section 13)

1 Definitions

In this Schedule:

5

assets 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.

conveyance includes transfer, assignment and assurance.

10

instrument 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 judgment, order or process of a court.

liabilities means all liabilities, debts or obligations (whether present or future and whether vested or contingent).

15

2 Transfer of certain assets, rights and liabilities to Superannuation Corporation

On the commencement of Division 1 of Part 2 of this Act, all assets vested in the Property Trust on account of the Beneficiary Fund, and the rights and liabilities (if any) of the Property Trust in relation to that Fund, are transferred to the Superannuation Corporation and the following provisions have effect:

20

(a) those assets vest in the Superannuation Corporation by virtue of this clause and without the need for any conveyance,

25

(b) those rights and liabilities become the rights and liabilities of the Superannuation Corporation,

(c) all proceedings relating to those assets, rights and liabilities commenced before the transfer by or against the Property Trust and pending immediately before the transfer are taken to be proceedings pending by or against the Superannuation Corporation,

30

Presbyterian Church (Corporations) Bill 1995

Schedule 2 Transfer of assets, rights and liabilities

- (d) any act, matter or thing relating to those assets, rights and liabilities done or omitted to be done before the transfer by, to or in respect of the Property Trust is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Superannuation Corporation, 5
- (e) a reference in any instrument of any kind to the Property Trust (in so far as it relates to those assets, rights and liabilities) is to be read as a reference to the Superannuation Corporation. 10

3 Transfer of assets, rights and liabilities of unincorporated bodies of the Church

- (1) On the day on which a corporation is constituted under Division 2 of Part 2 of this Act, the following provisions have effect:
 - (a) any assets of the unincorporated body that is incorporated (including those assets vested in the Property Trust in trust for the unincorporated body) vest in the corporation so constituted by virtue of this clause without the need for any conveyance, 15
 - (b) the rights and liabilities of the unincorporated body become the rights and liabilities of the corporation so constituted, 20
 - (c) all proceedings commenced before that day by or against the unincorporated body and pending immediately before that day are taken to be proceedings pending by or against the corporation so constituted, 25
 - (d) any act, matter or thing relating to those assets, rights and liabilities done or omitted to be done before that day by, to or in respect of the unincorporated body is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the corporation so constituted, 30
 - (e) a reference in any instrument of any kind to the unincorporated body is to be read as a reference to the corporation so constituted. 35

-
- (2) Assets vesting in a corporation by virtue of this Schedule are not to be dealt with contrary to the provisions of any trust affecting the assets immediately before the constitution of the corporation (being provisions as to the purposes for which the assets may or are required to be applied). 5
- (3) No attornment to the corporation by any lessee of land vested in the corporation by the operation of this clause is required.

4 Transfer of assets etc of dissolved corporations

- (1) On the date on which a proclamation under section 8 takes effect to dissolve a corporation, the assets, rights and liabilities (if any) of the dissolved corporation are transferred to the Property Trust and the following provisions have effect: 10
- (a) the assets of the dissolved corporation vest in the Property Trust by virtue of this clause without the need for any conveyance, 15
- (b) the rights and liabilities of the dissolved corporation become the rights and liabilities of the Property Trust,
- (c) all proceedings commenced before that day by or against the dissolved corporation and pending immediately before that day are taken to be proceedings pending by or against the Property Trust, 20
- (d) any act, matter or thing relating to those assets, rights or liabilities done or omitted to be done before that day by, to or in respect of the dissolved corporation is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Property Trust, 25
- (e) a reference in any instrument of any kind to the dissolved corporation is to be read as a reference to the Property Trust. 30
- (2) No attornment to the Property Trust by a lessee from the dissolved corporation is required.

5 Operation of Schedule

- (1) The operation of this Schedule is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or 5
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 10
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other agreement.

6 Stamp duty

Stamp duty is not chargeable in respect of the transfer of assets, rights and liabilities to a corporation (including the Property Trust) under this Schedule. 15