NORTHERN TERRITORY OF AUSTRALIA

PRESBYTERIAN CHURCH (NORTHERN TERRITORY) PROPERTY TRUST ACT

As in force at 1 December 2000

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 December 2000. Any amendments that commence after that date are not included.

PRESBYTERIAN CHURCH (NORTHERN TERRITORY) PROPERTY TRUST ACT

An Act to provide for the incorporation of the Presbyterian Church (Northern Territory) Property Trust and for other related purposes

1 Short title

This Act may be cited as the *Presbyterian Church (Northern Territory) Property Trust Act*.

2 Definitions

In this Act, unless the contrary intention appears:

Church means the Presbyterian Church of Australia.

church trust property means property in the Territory that is for the time being subject to a trust, whether by dedication, consecration, trust instrument or otherwise, for, or for the use, benefit or purposes of, the Church.

congregation means the congregation of a church of the Presbyterian Church of Australia.

General Assembly means the General Assembly of the Church in the State of New South Wales.

Presbyterian Church of Australia means the congregations of the Presbyterian Church of Australia continuing to function after 22 June 1977.

scheme of co-operation means a scheme of co-operation entered into in pursuance of section 22.

Trust means the Presbyterian Church (Northern Territory) Property Trust established by section 3. and

trustees means the members of the Trust.

3 Establishment of Trust

(1) There is established by this Act a trust by the name of the Presbyterian Church (Northern Territory) Property Trust.

(2) The Trust:

(a) is a body corporate with perpetual succession;

(b) shall have a common seal;

(c) subject to this Act, has the power to acquire, hold and dispose of or otherwise deal with real and personal property;

(d) may sue and be sued in its corporate name; and

(e) has, in addition to the powers expressly conferred on it by this Act, such other powers as are necessary or convenient for the performance of its functions under this Act.

4 Constitution of Trust

(1) Subject to subsection (3), the Trust shall consist of 4 persons of whom 2 shall be Ministers, and 2 shall be Communicants or Adherents, of the Church in the Northern Territory elected from time to time by the General Assembly.

(2) A trustee elected under subsection (1) holds office for 3 years.

(3) Until such time as persons are elected under subsection (1), the Trust shall consist of the persons who, for the time being, hold office as the trustees of the Presbyterian Church (New South Wales) Property Trust, being the body corporate of that name established by the Presbyterian Church (New South Wales) Property Trust Act, 1936 of the State of New South Wales, as amended from time to time.

5 Management and proceedings of Trust

(1) There shall be a chairman of the Trust who shall be elected by the trustees from among their number.

(2) The chairman shall hold office for a period of 12 months but is eligible for re-election.

(3) The chairman shall preside at all meetings of the Trust at which he is present.

(4) In the absence of the chairman from a meeting of the Trust, the trustees present shall elect one of their number to preside at the meeting.

(5) At a meeting of the Trust 4 trustees shall constitute a quorum.

(6) The method of calling meetings of the Trust, the places at which those meetings are held and the procedure to be followed at those meetings shall be as determined from time to time by the trustees.

(7) The Trust shall meet not less than once in every 6 months and shall keep or cause to be kept minutes of its proceedings and a record of its resolutions.

(8) The minutes and the records of the Trust kept under subsection (7) shall be made available for inspection when required by the official auditor of the Church, being the person appointed to that office by the General Assembly.

6 Common seal of Trust

(1) The trustees may determine the form of the common seal of the Trust.

(2) The trustees shall have the custody of the common seal of the Trust.

(3) The common seal of the Trust shall be affixed to such documents or classes of documents as the trustees determine.

(4) The affixing of the common seal of the Trust shall be attested by not less than 4 trustees.

(5) All courts, judges and persons acting judicially shall take notice of the common seal of the Trust affixed to a document and shall presume that it was duly affixed.

7 Property to vest in Trust

(1) Subject to this section, land in the Territory, together with rights, easements and appurtenances relating to the land, and personal property in the Territory, which is, on the commencement of this Act, held or which, at any date after the commencement of this Act, shall be held, by a person for or on behalf of the Church or which belongs to the Church whether in possession, reversion, remainder or expectancy whether for, or for the use of, or for the benefit of the Church shall, without a conveyance or transfer, vest in the Trust on and after the commencement of this Act.

(2) Subsection (1) applies to and in relation to land or personal property referred to in that subsection whether or not the land or property is held on behalf of:

(a) or belongs to, a congregation or institution of the Church; or

(b) an activity, service or interest of the Church,

and whether or not the land or property is connected with a congregation, institution, activity, service or interest of the Church.

(3) Land or personal property which vests in the Trust under this section shall, subject to an express trust affecting the land or property, be held and may be dealt with by the Trust in accordance with this Act.

(4) Land or personal property which would otherwise vest in the Trust under subsection (1) shall not vest under that subsection where the land or personal property is subject to an encumbrance, charge or mortgage, except with the consent of the encumbrancee, chargee or mortgagee, until the encumbrance, charge or mortgage has been discharged or until the Trust, with the consent of the encumbrancee, chargee or mortgagee, has undertaken to be responsible for the liabilities imposed by the encumbrance, charge or mortgage.

8 Vesting of other property in Trust

(1) In addition to the land or personal property vested in the Trust by section 7, the Trust may hold land or personal property in the Territory on trust for any purpose, activity or institution of the Church whether within or outside Australia, or in any way connected with the Church.

(2) Land or personal property vested in the Trust by subsection (1) shall be held, and may be dealt with, in accordance with this Act as if the land or personal property is vested in the Trust under section 7.

9 Variation of Trust

(1) Where, by reason of circumstances subsequent to the creation of a trust to which church trust property is for the time being subject, it has, in the opinion of the General Assembly acting at the request of the Trust, become impossible or inexpedient to carry out or observe the trust, the General Assembly may, by resolution, direct that the property be held for, or for the use, benefit or purposes of the Church subject to such other trust as the General Assembly declares and the first-mentioned trust shall thereupon cease and determine and the property shall be held subject to the trust so

declared.

(2) The Trust shall not make a request under subsection (1) in relation to church trust property held on behalf of a congregation without first obtaining a report from the Presbytery of the Bounds.

(3) Subject to subsection (4), church trust property shall be applied for the same congregation or, if not held on behalf of a congregation, for the same purpose as nearly as may be as the purpose for which it was held immediately before the General Assembly resolved under subsection (1) that the trust subject to which the property was held should cease and determine.

(4) The General Assembly may by resolution declare that, by reason of circumstances subsequent to the creation of a trust to which church trust property is held, it has, in the opinion of the General Assembly, become impossible or inexpedient to deal with or apply the property or some part of it for the use or benefit of the congregation or for the same or like purpose, and, in such a case, the property or a part of it may be dealt with and applied for such other purpose and in relation to such other congregation or congregations as the General Assembly by resolution declares.

(5) Where church trust property is held by the Trust for a purpose, activity or institution conducted by or on behalf of the General Assembly of the Presbyterian Church of Australia, the powers conferred by subsection (4) on the General Assembly shall be exercised by it not only at the request of the Trust but also at the request of, and in accordance with any directions given by, the General Assembly of the Presbyterian Church of Australia.

10 Rules relating to dealing with land

(1) Subject to section 11(3), the General Assembly may make rules in relation to:

(a) the purchase or acquisition of freehold or leasehold property in the Territory:

(i) as an investment for the funds of the Church;

(ii) for any use, activity, service or object of the Church; or

(iii) for the purposes of the Church generally; and

(b) the dealing with, management and control of property vested in the Trust,

but, if such a rule is inconsistent with this Act or any other law of the Territory, the rule shall to the extent of the inconsistency be void.

(2) A failure on the part of the Trust or a person to comply with a rule made by the General Assembly under this section shall not invalidate a transaction in relation to which the rule applied.

11 Dealing with congregational property

(1) Property held on behalf of a congregation shall not be sold, leased, mortgaged, surrendered or exchanged, and a claim in relation to the compulsory acquisition or surrender of such property shall not be determined, without the consent of the congregation.

(2) The consent of a congregation shall be deemed to have been given for the purposes of subsection (1) if a majority of the members of the congregation present and voting at a meeting of the congregation, duly called for the purpose of considering and deciding on the question, vote in favour of the particular matter.

(3) The General Assembly shall not make a rule under section 10 which in any way attempts to limit the rights of a congregation under this section.

12 Power of Trust to deal with land

(1) Subject to this Act, all property vested in the Trust by this Act shall, so far as the property is not subject to an express trust, be held and dealt with by the Trust in such manner as the Trust thinks fit.

(2) The General Assembly may from time to time give directions or instructions to the Trust in relation to a matter affecting property held by it for the Church.

(3) A direction or instruction under subsection (2) may be given in relation to the property of the Church generally or in relation to a particular fund, institution, activity or service of the Church.

(4) The Trust shall comply with a direction or instruction given under this section.

13 Trust may lease property

Subject to this Act, the Trust may grant a lease or sublease of land or premises held by it for such periods, at such rents and subject to such terms and conditions as it thinks fit.

14 Trust may exchange, &c., land

Subject to section 11, the Trust has full discretionary power to act in relation to all cases of exchange, surrender, dedication and compulsory acquisition of property vested in the Trust under this Act including the power to make a claim for compensation, and to

agree to and settle the terms and conditions of such a claim as it thinks fit.

15 Trust may mortgage land

Subject to section 11:

(a) the Trust may from time to time mortgage to a person land vested in the Trust by this Act for the purposes of securing the repayment of such sum of money with or without interest, as the Trust considers necessary for the purposes of the Church generally or its funds, services, institutions or interests or for the purposes of any congregation of the Church; and

(b) the Trust may guarantee advances, with or without security, for any purpose set out in this section.

16 Trust's power of sale

(1) Subject to this Act, the Trust may, as it thinks fit, from time to time sell property vested in it by this Act by public auction or private contract at such price as can be reasonably obtained for the property.

(2) Where property is sold by the Trust under subsection (1), the Trust shall transfer or convey the property and it shall vest in the transferee or purchaser, his heirs, executors, administrators and assigns, according to the estate and interest of the Trust in the property freed and discharged from all trusts.

(3) The Trust shall stand possessed of the net moneys obtained from a mortgage given over property and the net moneys arising from the sale, surrender or compulsory acquisition of property sold, surrendered or compulsorily acquired after payment and satisfaction of mortgage and other moneys chargeable against the property.

(4) Subject to subsection (5) and to the consent of the General Assembly, the Trust may apply the moneys in its possession in accordance with that subsection for:

(a) the erection of buildings for the congregation to which the property mortgaged, sold, surrendered or compulsorily acquired belonged;

(b) the improvement, repair, enlargement or maintenance of a church, minister's residence, school house or hall of the congregation; or

(c) the purchase of other property or the erection of buildings for the congregation,

or may otherwise apply those moneys for the benefit of the congregation in such manner as the General Assembly directs.

(5) Where subsection (4) is not applicable either because there is no congregation to which the property belonged, or because the property was held for the Church generally or for a fund, institution, activity or service of the Church, the Trust shall apply the moneys in accordance with the directions of the General Assembly.

17 Trust may guarantee performance or indemnify loss

The Trust may guarantee, or undertake to indemnify a person for any loss arising out of, the performance of an obligation undertaken by a person administering property used for any purpose, activity or institution of the Church, and whether the property is solely used for that purpose or activity or by that institution or not.

18 Rights of minister of church

(1) The minister duly appointed to a church:

(a) shall, at all times, have free access to the church of which he is the officiating minister;

(b) may freely exercise his spiritual functions in the church without interruption or disturbance; and

(c) may, while he continues to be the minister, freely use, possess and enjoy the minister's dwelling house and the appurtenances to the house.

(2) The exercise of the rights given under subsection (1) shall not confer a right of possession or property on a minister after he has ceased to be, or has been removed from the office of, the officiating minister of the church regardless of the length of time for which he exercised those rights.

19 Exercise of certain powers by Deacon's Court or Committee of Management

(1) The Deacon's Court or Committee of Management of a congregation shall hold all moneys collected on behalf of the congregation and shall apply those moneys in such manner as the General Assembly, by regulation or otherwise, directs.

(2) The Deacon's Court or Committee of Management of a congregation may from time to time, with the approval of the Trust, exercise all or any of the functions of the Trust relating to the management of the property of the congregation.

20 Receipt to absolve from liability

A receipt for moneys:

(a) raised on property mortgaged or sold by the Trust in accordance with this Act;

(b) received as a result of the surrender or compulsory acquisition of property vested in the Trust;

(c) paid to the Trust as the result of the exercise by it of any of the powers conferred on it under this Act; or

(d) otherwise paid to the Trust in accordance with this Act,

being a receipt which:

(e) has affixed to it, in accordance with section 6, the seal of the Trust;

(f) is signed by a majority of the trustees; or

(g) is signed by a person authorized by the Trust to receive those moneys,

shall exonerate the mortgagee, purchaser or other person paying the moneys from all liability for supervising the application of those moneys or for the loss, misapplication or non-application of those moneys and from inquiring into the propriety, necessity or regularity of the mortgage, sale, lease or other dealing, and no mortgagee, purchaser or other person paying the moneys shall be entitled or concerned to inquire whether consent has been given or rules, regulations or formalities made or imposed and, if any have been made or imposed, have been observed and complied with.

21 Certain property to be transferred to Trust

(1) Where, by a will, deed or other instrument, property in the Territory is:

(a) devised, bequeathed, given, granted, released, conveyed or appointed or is declared or directed to be held for, or on trust for, or for the benefit of, the Church, a congregation or a fund, institution, activity or service of the Church;

(b) recoverable by, or payable to, the Church, a congregation or a fund, institution, activity or service of the Church;

(c) payable for religious, social, educational or charitable work of the Church; or

(d) payable to an officer or official of the Church for the benefit of the Church generally or of a fund, institution, activity or service of the Church or of that of a congregation,

the will, deed or other instrument shall be construed and shall take effect as if the Trust were named in it as legal owner.

(2) The Trust may call for and require the payment, transfer, conveyance and delivery to it of property referred to in subsection (1).

(3) Property paid, transferred, conveyed or delivered to the Trust in accordance with subsection (2) shall be held and dealt with by and be under the direction and control of the Trust subject only to the trusts declared in relation to the property in the will, deed or other instrument relating to the property.

(4) Where a person pays, transfers, conveys or delivers property to the Trust in accordance with this section, an acknowledgement or receipt which:

(a) has affixed to it, in accordance with section 6 the seal of the Trust;

(b) is signed by a majority of the Trustees; or

(c) is signed by a person authorized by the Trust to receive the property,

shall be sufficient discharge and complete exoneration to the person who is liable to pay, transfer, convey or deliver the property.

22 Power to deal with property where scheme of co-operation entered into

(1) Where, with the consent for the time being and from time to time prescribed by the General Assembly, a congregation has, at a meeting duly called in accordance with the requirements of the General Assembly, resolved to enter into a scheme of co-operation with, or involving, a church of another denomination or a congregation or activity of such a church being a scheme that involves the use of property vested in the Trust, the Trust may, while that scheme of co-operation continues in force, permit the property to be used, managed and administered in connection with

the scheme in such manner and upon such conditions as the General Assembly determines.

(2) The power of the General Assembly to determine conditions under subsection (1) includes determining conditions in relation to the making of contributions of money for the acquisition, construction, alteration or repair of assets vested in or held on behalf of a co-operating church or congregation on such terms as to charges on other assets and property vested in the Trust, for such contributions from other denominations and otherwise as may be determined, and any such contributions by or on behalf of a congregation of the Church or towards assets of or held on behalf of such a congregation shall to the extent so determined at the time of the contributions be so secured, subject however to all mortgages and charges created in good faith for consideration and registered or entitled to be registered at the date of cessation of the scheme of co-operation.

(3) The proceeds of the sale, mortgage or other dealing with property referred to in this section and all moneys collected or held in respect of a scheme of co-operation may be applied in such manner as the General Assembly determines.

23 Rights of minister of co-operating congregations

The minister or person in charge of the religious services of a congregation which has entered into a scheme of co-operation may be of a denomination other than Presbyterian and, if that minister is of another denomination, he may, so long as he is in charge of the religious services for and so long as the scheme of co-operation is in force, exercise the rights conferred on a minister by section 18.

24 Constitution of Committee of Management where scheme of co-operation is in force

Where a congregation has entered into a scheme of co-operation, the Committee of Management of the congregation may include members of a congregation which is a party to the scheme of co-operation notwithstanding that the members may be of a denomination other than Presbyterian.

25 Certain sections to apply to property held on behalf of co-operating congregation

(1) Subject to subsection (2), sections 22, 23 and 24 apply to and in relation to all property held on behalf of a congregation which has entered into a scheme of co-operation except to the extent that the property is held subject to an express trust expressly forbidding its use or administration in a way referred to in those sections.

(2) Subsection (1) shall not prevent the use of property in a way referred to in section 22, 23 or 24 where the property is merely directed to be held on trust for Presbyterian worship or purposes.

26 Registrar-General shall amend Register, &c.

(1) The Registrar-General shall, on receipt of an application by the Trust, accompanied by:

(a) a certificate under subsection (2);

(b) the certificate as to title in respect of the land the subject of the application; and

(c) such other instrument as the Registrar-General may require,

make the appropriate entry in the Register kept under the *Land Title Act* and on the certificate as to title and carry out such other acts as are necessary to give effect to section 7.

(2) For the purposes of this section, a certificate under the seal of the Trust and signed by the chairman of the Trust on behalf of the Trust is evidence that:

(a) land described in the certificate is; or

(b) a right stated in the certificate in relation to land in the certificate has,

vested under section 7 in the trust.

(3) A document purporting to be a certificate referred to in subsection (2) shall, unless the contrary is proved, be deemed to be such a certificate.

27 Evidence of membership resolutions, &c., of the Trust

(1) A certificate under the hand of the person for the time being holding the office or performing the duties of Clerk of the General Assembly certifying that:

(a) the Trust consists of the persons specified in the certificate;

(b) on a day specified in the certificate, the Trust consisted of the persons specified in the certificate;

(c) a declaration, determination, resolution or rule specified in the certificate has been made or passed by the General Assembly; or

(d) the Church comprises the bodies set out in the certificate and that those bodies carry out the duties set out in the certificate,

is evidence of the matters so certified.

(2) A document purporting to be a certificate referred to in section 27 or purporting to be a receipt referred to in section 20 or 21 shall, unless the contrary is proved, be deemed to be such a certificate or receipt.

28 Effect of Act on other Acts

Nothing in this Act shall be taken to limit the operation of any other law of the Territory and this Act shall be read subject to all other laws of the Territory.

29 Repeal

The *Private Act of 1899*, *The Presbyterian Church of South Australia Act* of the State of South Australia in its application to the Territory as a law of the Territory, is repealed.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = *Gazette*
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

Presbyterian Church (Northern Territory) Property Trust Act 1986 (Act No. 3, 1986)

Assent date	18 April 1986
Commenced	18 April 1986

Statute Law Revision Act 1989 (Act No. 60, 1989)

Assent date	2 October 1989
Commenced	2 October 1989

Real Property (Consequential Amendments) Act 1991 (Act No. 33, 1991)

Assent date	25 June 1991
Commenced	1 October 1991 (*Gaz* S49, 1 October 1991)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and *Gaz* G38, 27 September 2000, p 2)

3 LIST OF AMENDMENTS

s 2	amd No. 60, 1989, s 6
s 26	amd No. 33, 1991, s 7; No. 45, 2000, s 11