



Australian Capital Territory

Presbyterian Church Trust Property Act 1971 No 16

Republication No 3

Republication date: 22 August 2002

Last amendment made by [A2001-44](#)

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Presbyterian Church Trust Property Act 1971*, including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes), as in force on 22 August 2002. It also includes any amendment, repeal or expiry affecting the republished law to 12 September 2001.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
12 September 2001



Australian Capital Territory

Presbyterian Church Trust Property Act 1971

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Amendments incorporated to
12 September 2001



Australian Capital Territory

Presbyterian Church Trust Property Act 1971

An Act relating to the property of the Presbyterian Church of Australia in
the Australian Capital Territory

1 Name of Act

This Act is the *Presbyterian Church Trust Property Act 1971*.

2 Application of Legislation Act

The *Legislation Act 2001* does not apply to instruments made by the general assembly or the trust.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

church trust property means property in the ACT 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.

scheme of cooperation means a scheme of cooperation entered into under section 23.

the Church means the Presbyterian Church of Australia.

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

the trust means the Presbyterian Church (Australian Capital Territory) Property Trust established by section 4.

the trustees means the members of the trust.

4 Establishment of trust

- (1) There shall be a trust by the name of the Presbyterian Church (Australian Capital Territory) Property Trust.
- (2) The trust—

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) has, subject to this Act, power to acquire, hold and dispose of or otherwise deal with real and personal property; and
- (d) may sue and be sued in its corporate name; and
- (e) has, in addition to the powers expressly given to it by this Act, the other powers that are necessary or convenient for the performance of its functions under the Act.

5 Constitution of trust

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* (NSW).

6 Management and proceedings of trust

- (1) There shall be a chairperson of the trust who shall be elected by the trustees from among their number.
- (2) The chairperson shall hold office for a period of 12 months but is eligible for re-election.
- (3) The chairperson shall preside at all meetings of the trust when he or she is present.
- (4) In the absence of the chairperson from a meeting of the trust, the trustees present shall elect 1 of their number to preside at that meeting.
- (5) At a meeting of the trust, 4 of the trustees constitute a quorum.
- (6) The trust shall meet at least once every 6 months and shall keep or cause to be kept minutes of its proceedings and a record of its resolutions.

- (7) The minutes of proceedings of the trust and the record of its resolutions 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.
- (8) The method of calling meetings of the trust, the places where 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 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 attached to the documents or classes of documents that the trustees determine.
- (4) The attaching 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 attached to a document and shall presume that it was duly attached.

8 Property to vest in trust

- (1) Subject to this section, any land in the ACT, together with any rights, easements and appurtenances relating to that land, and any personal property in the ACT, that is, at the date of commencement of this Act, held, or that, at any date after the date of commencement of this Act, shall be held, by any person for or on behalf of the Church or that 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 any conveyance or transfer, vest in the trust on and after the date of commencement of this Act.

- (2) Subsection (1) applies in relation to land or personal property referred to in that subsection whether or not that land or property—
- (a) is held on behalf of, or belongs to, any congregation or institution of the Church; or
 - (b) is held on behalf of any activity, service or interest of the Church;
- and whether or not that land or property is connected with any congregation, institution, activity, service or interest of the Church.
- (3) Subject to any express trust affecting that land or personal property, any land or property that vests in the trust under this section shall be held, and may be dealt with, by the trust in accordance with the provisions of this Act.
- (4) If any land or personal property referred to in this section is subject to an encumbrance, charge or mortgage, that land or property shall not vest in the trust, except with the consent of the encumbrancee, chargee or mortgagee, until that 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 that encumbrance, charge or mortgage.

9 Vesting of other property in trust

- (1) In addition to the property vested in the trust under section 8, the trust may hold property in the ACT 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) Property vested in the trust under subsection (1) shall be held, and may be dealt with, in accordance with the provisions of this Act as if that property were property that had vested in the trust under section 8.

10 Variation of trust

- (1) If, because of circumstances subsequent to the creation of a trust to which any church trust property is for the time being subject, it has, in the opinion of the Assembly acting at the request of the trust, become impossible or inexpedient to carry out or observe that trust, the Assembly may by resolution direct that the property be held for, or for the use, benefit or purposes of the Church subject to the other trust that the Assembly declares and that firstmentioned trust shall thereupon cease and determine and the property shall be held subject to the trust so declared.
- (2) If any church trust property referred to in subsection (1) is held on behalf of a congregation, the trust shall not make a request referred to in subsection (1) without first having obtained a report from the Presbytery of the Bounds.
- (3) Subject to subsection (4), the property shall be applied for the same congregation or, if not held on behalf of a congregation, for the same purposes as nearly as may be as the purposes for which it was held immediately before the Assembly resolved that the trust subject to which the property was held should cease and determine.
- (4) The Assembly may by resolution declare that, because of circumstances subsequent to the creation of a trust to which any church trust property is held, it has, in the opinion of the Assembly, become impossible or inexpedient to deal with or apply that property or some part of the property for the use or benefit of that congregation or for the same or like purposes, and, in such a case, that property or that part of that property may be dealt with and applied for such other purposes and in relation to such other congregation or congregations as the Assembly by resolution declares.
- (5) If any church trust property is held by the trust for any purpose, activity or institution conducted by or on behalf of the General Assembly of the Presbyterian Church of Australia, the powers given by subsections (1) to (4) to the 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.

(6) In this section:

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

11 Rules relating to dealing with land

(1) The General Assembly may make rules with respect to—

(a) the purchase or acquisition of freehold or leasehold property in the ACT—

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

(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 all or any particular property that is vested in the trust;

but, if such a rule conflicts with this Act or any other Territory law, the rule shall to the extent of that conflict be void.

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

12 Dealing with congregational property

(1) No property that is held on behalf of a congregation shall be sold, leased, mortgaged, surrendered or exchanged and no claim in relation to the compulsory acquisition or surrender of any such property shall be determined without the consent of that congregation.

(2) The consent of the congregation shall be deemed to have been given for 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 11 that in any way attempts to limit the rights of a congregation under this section.

13 Power of trust to deal with land

- (1) Subject to this Act, all property vested in the trust shall, so far as the property is not subject to any express trust, be held and dealt with by the trust in any way that the trust considers appropriate.
- (2) The General Assembly may from time to time give directions or instructions to the trust with regard to any matter affecting any property held by it for the Church.
- (3) Any such directions or instructions may be given with respect to the property of the Church generally or with respect to any fund, institution, activity or service of the Church.
- (4) The Trust shall comply with any such directions or instructions.

14 Trust may lease land

Subject to this Act, the trust may grant leases or subleases of any land or premises held by it for the periods, at the rents and subject to the terms and conditions that it considers appropriate.

15 Trust may exchange etc land

Subject to the rights of a congregation under section 12, the trust has full discretionary power to act in relation to all cases of exchange, surrender, dedication and compulsory acquisition of any property vested in the trust under this Act including the power to make claims for compensation, and to agree to and settle, on the terms and conditions that it considers appropriate, any such claims.

16 Trust may mortgage land

Subject to the rights of a congregation under section 12—

- (a) the trust may from time to time mortgage to any person any land vested in the trust under this Act for the purposes of securing the repayment of the sum or sums of money with or without interest that the trust considers necessary for the purposes of the Church generally or any of 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 made for any purpose set out in this section.

17 Trust's power of sale

- (1) Subject to this Act, the trust may from time to time sell any property vested in it by public auction or private contract as it considers appropriate at the price that can be reasonably obtained for that property.
- (2) When any property is sold by the trust, the trust shall transfer or convey that property and it shall vest in the transferee or purchaser, his or her heirs, executors, administrators and assigns, according to the estate and interest of the trust in that property absolutely freed and discharged from all trusts.
- (3) The trust shall stand possessed of the net money obtained from any mortgage given over any land the net money arising from the sale, surrender or compulsory acquisition of any property sold, surrendered or compulsorily acquired after payment and satisfaction of mortgage and other money chargeable against that property and may apply the money, with the consent of the General Assembly, for all or any of the following purposes:
 - (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 the church, minister's residence, school house or hall of that congregation;

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

or may otherwise apply the money for the benefit of that congregation in any way that the General Assembly directs.

- (4) If subsection (3) 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 any fund, institution, activity or service of the Church, the trust shall apply the money in accordance with the directions of the General Assembly.

18 Trust may guarantee performance or indemnify loss

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

19 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 or she is the officiating minister; and
- (b) may freely exercise his or her spiritual functions in the church without interruption or disturbance by any person; and
- (c) may, while he or she continues to be the minister freely use, possess and enjoy the minister's dwelling house and the appurtenances to that house.

- (2) The exercise of any right under subsection (1) shall not give any right of possession or property to a minister after he or she 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 that minister exercised that right.

20 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 money collected on behalf of that congregation and shall apply the money in the way that 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 in relation to the management of the property of the congregation.

21 Receipt to absolve from liability

A receipt for—

- (a) the money raised on any property mortgaged by the trust; or
- (b) the purchase money of any property sold under this Act; or
- (c) the money received as a result of the surrender or compulsory acquisition of any property; or
- (d) any other money payable to the trust as the result of the exercise by it of any of the powers given to it under this Act or otherwise receivable by it under this Act;

being a receipt—

- (e) to which the seal of the trust has been attached in accordance with section 7; or
- (f) that is signed by a majority of the trustees; or

- (g) that is signed by a person authorised by the trust to receive the money;

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

22 Certain property to be transferred to trust

- (1) If, by any will, deed or other instrument, any property in the ACT—
 - (a) is devised, bequeathed, given, granted, released, conveyed or appointed or is declared or directed to be held for, or on trust for, of for the benefit of, the Church, a congregation or a fund, institution, activity or service of the Church; or
 - (b) is recoverable by, or payable to, the Church, a congregation or any fund, institution, activity or service of the Church; or
 - (c) is payable for any religious, social, educational or charitable work of the Church; or
 - (d) is payable to an officer or official of the Church for the benefit of the Church generally or any of its funds, institutions, activities or services or that of any congregation;

that 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 any property referred to in subsection (1).
 - (3) Any property paid, transferred, conveyed or delivered 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 that property in the will, deed or other instrument relating to that property.
 - (4) If any person pays, transfers, conveys or delivers any property to the trust in accordance with this section, an acknowledgment or receipt—
 - (a) to which the seal of the trust has been attached in accordance with section 7; or
 - (b) that is signed by a majority of the trustees; or
 - (c) that is signed by a person authorised by the trust to receive that property;

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

23 Power to deal with property if scheme of cooperation entered into

- (1) If, with the consents 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 Assembly, resolved to enter into a scheme of cooperation 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 cooperation continues in force, permit that property to be used, managed and administered in connection with that scheme in the way and on the conditions that the General Assembly determines.

- (2) The conditions that the General Assembly may determine under subsection (1) include conditions with respect to the making of contributions of money for the acquisition, construction, alteration or repair of assets vested in or held on behalf of a cooperating church or congregation on the terms about charges on other assets and charges on property vested in the trust for any such contributions from other denominations and otherwise as may be so determined and any such contribution 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 cooperation.
- (3) The proceeds of the sale, mortgage or other dealing with any property referred to in this section and all money collected or held in relation to a scheme of cooperation may be applied in the way that the General Assembly determines.

24 Rights of minister of cooperating congregations

The minister or other person in charge of the religious services of a congregation that has entered into a scheme of cooperation may be of a denomination other than Presbyterian and, if that minister is of another denomination, he or she shall, so long as he or she is in charge of the religious services and so long as that scheme of cooperation is in force, have the rights of a minister that are specified in section 19.

25 Constitution of Committee of Management if scheme of cooperation is in force

If a congregation has entered into a scheme of cooperation, the Committee of Management of that congregation may include members of any other congregation that is a party to the scheme of cooperation and those members may be of a denomination other than Presbyterian.

26 Sections 23, 24 and 25 to apply to property held on behalf of cooperating congregation

- (1) The provisions of sections 23, 24 and 25 apply to and in relation to all property at any time held on behalf of a congregation that has entered into a scheme of cooperation except to the extent that the property is held subject to any express trust expressly forbidding its use or administration in any of the ways referred to in those sections.
- (2) Subsection (1) does not apply to prevent the use of property in a way referred to in sections 23, 24 and 25 if the property is merely directed to be held on trust for Presbyterian worship or purposes.

27 Registrar-general may amend register etc

- (1) The registrar-general shall, on application by the trust, make the entries in the register kept under the *Land Titles Act 1925* that are necessary to give effect to section 8.
- (2) For this section, a certificate under the seal of the trust and signed by the chairperson on behalf of the trust is evidence that—
 - (a) land described in the certificate is vested; or
 - (b) rights stated in the certificate in relation to land in the certificate have vested;in the trust under section 8.
- (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.

28 Evidence in relation to membership, resolutions etc of trust

- (1) A certificate signed by the person for the time being holding the office, or performing the duties, of Clerk of the General Assembly certifying—
- (a) that the trust consists of the persons specified in the certificate; or
 - (b) that, on a day specified in the certificate, the trust consisted of the persons specified in the certificate; or
 - (c) that any declarations, determinations, resolutions or rules specified in the certificate have been made or passed by the General Assembly; or
 - (d) that 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 subsection (1) or purporting to be a receipt referred to in section 21 or 22 shall, unless the contrary is proved, be deemed to be such a certificate or receipt.

29 Effect of Act on any other Act

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

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

Endnotes

3 Legislation history

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Presbyterian Church Trust Property Ordinance 1971* Ord1971-16 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* A1989-21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

Presbyterian Church Trust Property Act 1971 A1971-16

notified 12 August 1971

commenced 12 August 1971

as amended by

Legislation after becoming Territory enactment

Registrar-General (Consequential Provisions) Act 1993 A1993-64 sch 1

notified 6 September 1993 ([Gaz 1993 No S172](#))

s 1, s 2 commenced 6 September 1993 (s 2 (1))

sch 1 commenced 1 October 1993 (s 2 (2) and see [Gaz 1993 No S207](#))

Real Property (Consequential Provisions) Act 1993 A1993-90 sch

notified 17 December 1993 ([Gaz 1993 No S258](#))

s 1, s 2 commenced 17 December 1993 (s 2 (1))

sch commenced 1 January 1994 (s 2 (2) and see [Gaz 1993 No S270](#))

Land Titles (Consequential Amendments) Act 1995 A1995-54 sch pt 1

notified 20 December 1995 ([Gaz 1995 No S313](#))
 commenced 20 June 1996 (s 2 and see [Land Titles \(Amendment\) Act 1995](#), s 2 (3))

Legislation (Consequential Amendments) Act 2001 A2001-44 pt 295

notified 26 July 2001 ([Gaz 2001 No 30](#))
 s 1, s 2 commenced 26 July 2001 (IA s 10B)
 pt 295 commenced 12 September 2001 (s 2 and see [Gaz 2001 No S65](#))

4 Amendment history**Application of Legislation Act**

s 2 sub [A2001-44](#) amdt 1.3274

Registrar-General may amend register etc

s 27 am [A1993-64](#) sch 1; [A1993-90](#) sch; [A1995-54](#) sch pt 1

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	not amended	31 July 1991
2	A1995-54	31 January 1998

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