

22/09 Amendments to the Anglican Church of Australia Trust Property Act 1917

Explanatory Report

Background

1. By resolution 22/09, the Synod noted the increasing responsibilities in managing church trust property and requested the Standing Committee to confer with the Property Trust about seeking amendments to the Anglican Church of Australia Trust Property Act 1917 (the "1917 Act") to enable the Property Trust to discharge its responsibilities more efficiently and expeditiously.
2. At its meeting on 25 June 2010, the Property Trust –
 - (a) approved the proposed amendments to the 1917 Act shown as marked in the attached extracts* from the 1917 Act, and
 - (b) requested the Standing Committee to endorse the promotion of these amendments to the NSW Parliament.
3. At its meeting on 26 July 2010, the Standing Committee agreed to endorse the promotion of the proposed amendments to the NSW Parliament.

* *Note: Extracts not reprinted here.*

Explanation of amendments as initially proposed

Section 6AA: preclusion of ex officio membership of bishops on corporate bodies

4. By section 5 of the 1917 Act, the bishop of each Anglican diocese in New South Wales is ex officio a member of the corporate body constituted for the diocese under that section. Similarly, the bishop of any new diocese created in New South Wales would be a member ex officio of the corporate body constituted for that diocese under section 6.
5. The proposed section 6AA would enable the synod of a diocese, by ordinance, to preclude the bishop of the diocese from being a member ex officio of the corporate body of the diocese.
6. The proposed section 6AA has particular relevance for the Archbishop of the Diocese of Sydney in view of the size and complexity of the Diocese. The significant range of responsibilities exercised by the Archbishop makes it difficult for the Archbishop to regularly attend meetings of the corporate body. It is therefore considered appropriate to give the Synod of the Diocese the option of

precluding the Archbishop from ex officio membership of the corporate body of the Diocese.

7. In view of the particular relevance of the proposed section 6AA for the Diocese of Sydney, the section has been drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

Section 10A: delegation of powers and functions of corporate bodies

8. At present a corporate body of a diocese does not have the power to delegate the exercise of its powers and functions except in certain limited circumstances prescribed by law. It is proposed that a new section 10A be inserted into the 1917 Act to enable the corporate body of a diocese to delegate the exercise of its powers and functions (other than the power to authorise the use of its common seal) in accordance with an ordinance of the synod of the diocese.

9. Under the new section, the exercise of any such power or function under delegation would be as effective as if the corporate body of the trustees had exercised it (section 10A(3)). Further, the power to delegate under the new section would be in addition to any other power the corporate body may have to delegate the exercise of its powers and functions (section 10A(4)).

10. The proposed section 10A has particular relevance for the corporate body of the Diocese of Sydney in view of the size of the undertaking for which this corporate body is responsible. The proposed section 10A has therefore been drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

Section 11A: qualification of members of corporate bodies

11. It is proposed that a new section 11A be inserted into the 1917 Act to enable the synod of a diocese, by ordinance, to provide for qualifications that are to be met by all members or different classes of members of the corporate body of the diocese. A common qualification might be that a certain number of members should be clergy. However it is possible that the synod of a diocese may consider it prudent to ensure that some or all of the members of the corporate body have particular areas of expertise, for example in finance or building.

12. The proposed section 11A has been drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

Section 48: extension of powers in respect of church trust property held for a diocese

13. Under section 4 of the 1917 Act, the term "church trust property" is defined to include –

all or any part of any real and personal property which may for the time being be subject to any trust whether by dedication, consecration, trust, instrument, or otherwise, for or for the use, benefit, or purposes of the Anglican Church of Australia in any diocese, and each such diocese is referred to as the diocese for which the church trust property in question is held.

14. The 1917 Act gives the synod of a diocese extensive powers to manage, invest, deal with, and vary the trusts of the church trust property held for the diocese.

15. It was proposed that the powers of the synod of a diocese in respect of its church trust property be extended by inserting a new section 48 into the 1917 Act. The new section provides that unless the synod of a diocese, by ordinance, adopts, assents or otherwise consents to a canon, rule or determination made pursuant to the Schedule of the Anglican Church of Australia Constitution Act 1961, the canon, rule or determination is not capable of giving rise to any obligation requiring the use or application of church trust property held for that diocese.

16. The proposed section 48 was drafted to apply only to the Diocese of Sydney unless the synod of any other diocese declares, by ordinance, that the section applies to that other diocese.

Recent developments

17. In a letter dated 27 August 2010, the Primate wrote to the Diocesan Secretary expressing a number of concerns about the proposed insertion of a new section 48 into the 1917 Act. In particular the Primate expressed a view that if the proposed section 48 is made into law, it would potentially have a significant adverse effect on the orderly financial management of the affairs of the General Synod because it would not be known whether or when a particular diocese will give its assent to a financial measure.

18. Following the Primate's intervention, at its meeting on 13 September 2010, the Standing Committee –

- (a) requested the Chair of the Property Trust to review the text of the proposed amendments, and
- (b) requested that a motion be moved at the Synod "by request of the Standing Committee" endorsing the amendments (incorporating any changes as a result of the review) being promoted to the NSW Parliament, and
- (c) requested that a version of the 1917 Act (or relevant extracts from the 1917 Act) showing the proposed amendments be provided to the Synod no later than the

first day of the forthcoming session under cover of a brief explanatory report from the Diocesan Secretary.

19. At its meeting on 24 September 2010, the Property Trust requested that the proposed section 48 be decoupled from the other amendments being proposed by the Property Trust and that the Synod be requested to consider the promotion of these other amendments to the NSW Parliament as a matter of priority at its forthcoming session.

20. In view of the Property Trust's request, the Chair of the Property Trust intends –

- (a) to limit the review of the text of the proposed amendments to the matters which prompted the drafting of the proposed section 48, and
- (b) to seek the leave of the Synod to substitute the motion which currently appears as item 16.14 on the business paper for the first day of the session with the following motion –

“Synod, noting the explanatory report about the proposed amendments to the Anglican Church of Australia Trust Property Act 1917 –

- (a) endorses the promotion to the New South Wales Parliament of the amendments proposed to be made by the insertion into the Act of new sections 6AA, 10A and 11A, and
- (b) requests that any proposal to seek further amendments to the Act to address the concerns which prompted the drafting of the new section 48 of the Act be brought to the Synod for approval before being promoted to the New South Wales Parliament.”

For and on behalf of the Standing Committee.

ROBERT WICKS
Diocesan Secretary

29 September 2010