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*Provincial Corporate Trust Ordinance 1961-1970  
Adopting Ordinance 1970*

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No. 54, 1970

AN ORDINANCE for adopting certain ordinances of the Provincial Synod of N.S.W. entitled "Provincial Corporate Trust Ordinance of 1961" and "Provincial Corporate Trust Ordinance of 1961 Amending Ordinance of 1970".

WHEREAS a certain Ordinance entitled "Provincial Corporate Trust Ordinance of 1961" a copy of which is contained in the First Schedule hereto was passed by the Synod of the Province of New South Wales on the 8th day of June, 1961 AND WHEREAS the said Ordinance was amended by an Ordinance entitled "Provincial Corporate Trust Ordinance of 1961 Amending Ordinance of 1970" a copy of which is contained in the Second Schedule hereto and which was passed by the said Synod on the 14th day of April, 1970 AND WHEREAS it is expedient that the said Ordinances should be adopted by the Church in this Diocese NOW the Synod of the Diocese of Sydney in pursuance of the powers in that behalf conferred upon it by the Constitutions for the management and good government of the Church of England in Australia within the State of New South Wales HEREBY ORDAINS DECLARES DIRECTS AND RULES as follows:—

1. The said Ordinances contained in the First and Second Schedules hereto are hereby adopted and so far as the same are applicable shall be applied to the management and good government of the Church in this Diocese, but the provisions of the Provincial Corporate Trust Ordinance of 1961 shall be deemed not to have been adopted by this Synod unless and until all the amendments to that Ordinance contained in the provisions of the Provincial Corporate Trust Ordinance Amending Ordinance of 1970 shall have first become effective by being adopted by Ordinances passed by the Synods of the other dioceses of the Province of New South Wales and all such Ordinances are in force and effective at the same time.
2. This Ordinance may be cited as "Provincial Corporate Trust Ordinance 1961-1970 Adopting Ordinance 1970".

**FIRST SCHEDULE  
PROVINCIAL CORPORATE TRUST ORDINANCE OF 1961**

AN ORDINANCE to provide for an Act of Parliament whereby Corporate Trustees for the Church of England in the Province of New South Wales may be established and for matters incidental thereto.

WHEREAS by the twenty-third clause of the Constitutions of the Church of England within the State of New South Wales contained in the Schedule to the Church of England Constitutions Act Amendment Act 1902 it is provided that the Bishops and Clerical

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and Lay Representatives of the Church in the several Dioceses in the said State shall meet in Provincial Synod as therein provided.

AND WHEREAS the eighth clause of the Constitution of the Provincial Synod of New South Wales contained in the Schedule to the Provincial Synod Constitution Ordinance of 1907 empowers the Provincial Synod to make Ordinances upon and in respect of all matters and things concerning the order and good government of the Church in the Province of New South Wales provided that no ordinance except as thereafter mentioned shall be binding upon the Church in any Diocese unless and until such ordinance shall be accepted by the Church in such Diocese by an Ordinance of its Synod.

AND WHEREAS it is expedient to invoke the aid of the Parliament of New South Wales to constitute Provincial corporate trustees to accept receive and acquire by gift bequest or devise purchase or other transfer real and personal property for or for the benefit of the Church of England in New South Wales in certain circumstances and to hold manage lease mortgage charge sell convert appropriate apportion or otherwise deal with the same and for such purposes to empower the said corporate trustees subject to such directions as may be given by or under Ordinance of Provincial Synod to exercise such functions authorities rights and powers.

**THE PROVINCIAL SYNOD ORDAINS AND RULES AS FOLLOWS:—**

1. The Parliament of New South Wales be requested to pass an Act the enacting sections of which shall be in the same terms in terms to the life effect as the clauses contained in the Schedule hereto and that the Commonwealth of Australia be requested to apply by Ordinance the terms of the Act when enacted to the Australian Capital Territory.
2. This Ordinance may be cited as the Provincial Corporate Trust Ordinance of 1961.

**THE SCHEDULE**

1. A body corporate is hereby incorporated under the name of "The Church of England Provincial Trust". It shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall be capable of taking purchasing holding granting demising selling mortgaging disposing of or otherwise dealing with real and personal property and doing and suffering all other such acts and things as bodies corporate by law may do and suffer.
2. The first incorporators of the said corporation shall be the persons respectively holding and following offices in the Church of England in New South Wales on the day when this Act

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comes into operation namely the Archbishop of Sydney the Bishop of Newcastle the Bishop of Canberra and Goulburn the Bishop of Armidale the Bishop of Bathurst the Bishop of Riverina and the Bishop of Grafton. The said corporators so long as they shall hold their respective offices shall remain members of the Corporation until the Provincial Synod of the Church of England in New South Wales elects or appoints other persons in their place and stead.

3. The said Provincial Synod may by Ordinance appoint or make provision for the election of members of the corporate body

(a) to displace all of any of, the said corporators or members of the corporation appointed or elected in their stead or

(b) to fill any vacancy which may occur by reason of

(i) the death of any of the said corporators or members as aforesaid or

(ii) the resignation or retirement of any of the said corporators from his office or

(iii) the resignation of any of the said corporators or members of the corporation.

provided always that representation of each constituent diocese of the Province of New South Wales is maintained.

Any of the said corporators or members may resign membership of the corporation by a writing to that effect addressed to the Corporation stating the date on which his resignation will take effect and if no such date be stated his resignation shall take effect at the next meeting of the Corporation.

4. The number of members of the corporation shall be seven and a quorum for their meetings shall be four members unless and until Provincial Synod should determine a different number.

5. (a) Any resolution signed or any act authorised in writing by all the members of the corporation holding office at the date of such resolution or act shall be as valid and effective as if the resolution had been made or the act done at a duly constituted meeting of the members of the said corporation.

(b) Any deed or instrument executed or signed and any other act matter or thing done by any three members of the corporation in pursuance of a resolution thereof and under the common seal of the corporation shall be as effectual as if the same had been executed signed or done by all the members of the said corporation.

(c) Notwithstanding a vacancy or vacancies in the member-

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ship of the corporation any resolution or act made or done shall be valid so long as the members of the corporation are not less than four in number.

6. Every will deed or other instrument taking effect after the commencement of this Act to which the law of New South Wales applies and which has the effect of disposing of property to or for the use or benefit of the Church of England in New South Wales and does not refer to any diocese or to any parish organisation institution or activity of the said Church within a diocese in the said State shall be construed and given effect to as if the disposition therein contained were to the said corporation for the purposes generally of the Church of England in the Province of New South Wales provided that if such will deed or other instrument declares a particular or special purpose it shall be construed and given effect to as if the said disposition were to the said corporation to be applied by it for that particular or special purpose.
7. A receipt or acknowledgement given by the said corporation shall be a valid discharge to any person whose duty it is to transfer or hand over any property the subject of a disposition by any deed will or other instrument to the said corporation to which section six shall apply.
8. The said Provincial Synod may by ordinance confer upon the corporation generally and from time to time
  - (a) power to invest funds in its hands and to vary such investments
  - (b) power to pool the investments or the income therefrom
  - (c) powers of leasing mortgaging charging selling or otherwise dealing with property vested in it
  - (d) authority to apply or invest the proceeds thereof and the income arising from such investment
  - (e) any other powers of management which the said Synod thinks fit. Provided however that the said Provincial Synod may in respect of any property vested in the said corporation by the same or some other Ordinance limit or restrict the exercise of such powers as it may see fit.
9. In each case where by reason of circumstances subsequent to the creation of a trust to which this Act applies it has in the opinion of the Provincial Synod become impossible or impracticable to carry out or observe such trust the said Synod may by ordinance declare such opinion and by the same or subsequent ordinance direct the said corporation to hold the said property and the income thereof for some other particular or special purpose of the said Church in the said province which is as nearly as may be the purpose for which

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such property was held immediately before such ordinance. Provided that an ordinance under this section shall not be introduced unless and until the said Corporation reports to the said Synod that it is impossible or impracticable to carry out the terms of the said trust.

10. The said Provincial Synod may either generally or in any particular case by Ordinance direct an apportionment between the several dioceses of the said Province in such shares as it may deem fit of property which is vested in or becomes held by the said corporation for the purposes generally of the Church of England in the said Province.
11. No purchaser mortgagee lessee or other person or the Registrar-General upon any sale mortgage lease or other dealing purporting to be made under the powers granted by or under this Act or ordinances made hereunder shall be concerned to see or enquire into the necessity or propriety of such dealing or the mode of exercising such powers nor shall he be affected by notice that the exercise of the power is unauthorised irregular or improper nor shall he be concerned to see to the application and disposition of any purchase mortgage or other money or rent paid by him.
12. All moneys received from any sale mortgage lease or dealing made under the powers granted by or under this Act or ordinances made hereunder shall be paid to the said corporation or to such other person as the ordinance directing such sale mortgage lease or other dealing may provide and the receipt of the said corporation or of such other person as the case may be shall be an effectual discharge therefor.
13. The said corporation with respect to any moneys in its hands not the subject of any express direction as to investment may invest the same until otherwise directed by or under an ordinance of the Provincial Synod in securities issued by the Commonwealth of Australia or guaranteed by the State of New South Wales or on fixed deposit with any bank.
14. A certificate signed by the Metropolitan Bishop of the Province shall be prima facie evidence and in favour of all persons dealing with the said corporation in respect of property vested in it and the Registrar-General shall be conclusive evidence that the persons named in such certificates are the duly constituted members of such corporation.
15. A document purporting to be a copy ordinance certified under the hand of two members of the corporation shall be prima facie evidence and in favour of all persons dealing with the corporation in respect of property vested in it and the Registrar-General shall be conclusive evidence that an ordinance

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in the terms of such copy was duly made and assented to and that the provisions of any Statute relating to such ordinance have been duly complied with.

16. Subject to and without prejudice to any past operation of an ordinance to be made under the provisions of this Act and without prejudice to any estate right privilege obligation or liability vested acquired or incurred under any such ordinance the Provincial Synod may by ordinance repeal or from time to time amend any such ordinance.
17. During the recess of Provincial Synod the Standing Committee thereof may in place of the said Synod exercise such of the powers and functions and do and make such of the acts and things referred to in this Act as may from time to time be determined and delegated to it by an ordinance of the said Synod.
18. Provincial Synod may by ordinance make provisions not inconsistent with the terms of this Act for carrying the same into effect.
19. Notwithstanding the provisions of clause eight of the said Constitution of Provincial Synod an ordinance passed in pursuance of any of sections three eight nine sixteen seventeen or eighteen hereof shall be binding upon the said corporation and the property to which it relates without assent being given thereto by the respective Synods of the several Dioceses as mentioned in the said clause.
20. Each ordinance made under sections eight nine ten sixteen seventeen and eighteen of this Act may be recorded as follows:
  - (a) In case any lands therein referred to are under the provisions of the Real Property Act 1900 or any Act amending or taking the place of the said Act a copy of such ordinance certified under the seal of the corporation shall be deposited with the Registrar-General for safe custody and reference in accordance with the provisions of the Act.
  - (b) In case any lands therein referred to are not under the provisions of the Real Property Act 1900 or any Act amending or taking the place of the said Act a copy of such ordinance certified under the seal of the corporation shall be filed in the office of the Registrar-General in accordance with the provisions of the Registration of Deeds Act 1897 or any Act amending or taking the place of the said Act.

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SECOND SCHEDULE

PROVINCIAL CORPORATE TRUST ORDINANCE OF 1961  
AMENDING ORDINANCE 1970

THE PROVINCIAL SYNOD of the Province of New South Wales ORDAINS PRESCRIBES AND RULES as follows:

1. The Schedule to the Provincial Corporate Trust Ordinance of 1961 is amended
  - (a) By inserting in Section (2) the words "Australia within" after the words "Church of England in".
  - (b) By inserting in Section (6) the words "Australia generally within the State of" after the words "Church of England in" where first appearing.
  - (c) By inserting in Section (6) the words "Australia within" after the words "Church of England in" where secondly appearing.
  - (d) By omitting from Section (6) the words "refer to any diocese or to" and inserting in their place the words "either by its express terms or as the result of the operation or application of any rule or principle of law or construction have the effect of disposing of such property to or for the use or benefit of any diocese or".
  - (e) By omitting Section (10) and by inserting in its place the following new section:

"(10) (a) The said Corporation shall apportion the income of property which is vested in or becomes held by the said Corporation for the purposes generally of the Church of England in Australia within the said Province in accordance with the trusts on which such property is held as follows:

    - (i) For such purposes of the Provincial Synod and in such proportions or within such limits as the Standing Committee of that Synod and the Standing Committees or Diocesan Councils as the case may be of all the Dioceses in the Province shall by resolution in writing approve.
    - (ii) For such purposes of all or some or any of the dioceses in the Province and in such proportions as the Standing Committees or Diocesan Councils as the case may be of all the dioceses in the Province shall by resolution in writing approve.
    - (iii) In the event of the Standing Committee or Diocesan Council as the case may be of any Diocese failing to give such approval as is required by paragraphs (i) and (ii) hereof in relation to any particular property or trust, then to each diocese in the Province a share equal

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to the proportion which the number of members of the Provincial Synod which such diocese is entitled to elect to such Synod bears to the total number of members which may be elected to such Synod.

- (b) In any case where  
(i) the said Corporation, or  
(ii) the Provincial Synod

shall by resolution and in writing report that in its opinion it is advisable and also is in accordance with the purposes for which any specified trust property is held by the said Corporation that the corpus or capital sum of such property or any part thereof be transferred to all or any of the Dioceses in the Province the Provincial Synod may with the consent of the Standing Committees or Diocesan Councils as the case may be of all the Dioceses in the Province transfer such property or part thereof to the corporate trust body or bodies of such Diocese or Dioceses to be held by them on the same trusts, and such property shall thereupon be apportioned by the said Corporation and transferred to such corporate trust body or bodies in the same manner and in accordance with the same principles as are contained in paragraphs (ii) and (iii) of sub-section (a) hereof and thereafter shall be church trust property of the Diocese or Dioceses to which it is transferred.

- (f) By inserting in Section (17) the words "other than those contained or provided for in sections 9, 10, 16, 17, and 19 hereof" after the word "Act".
- (g) By omitting from Section (19) the words "nine" and "seventeen".
- (h) By inserting at the end of Section (19) the words "Provided that the provisions of this Section shall not apply to any ordinance in pursuance of Section 16 which would have the effect of repealing or amending any ordinance which required assent being given thereto by the respective Synods of the several Dioceses mentioned in the said clause."

2. This Ordinance may be cited as the Provincial Corporate Trust Ordinance of 1961 Amending Ordinance of 1970.

I certify that the Ordinance as printed is in accordance with the Ordinance as reported.

ATHOL RICHARDSON,  
Chairman of Committees.



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We certify that this Ordinance was passed by the Synod of the Diocese of Sydney on this 15th day of October, 1970.

W. L. J. HUTCHISON,  
K. N. SHELLEY,  
Secretaries of Synod.

I assent to this Ordinance.

MARCUS LOANE,  
Archbishop of Sydney.

15/10/1970.