

# NORTHERN TERRITORY OF AUSTRALIA

## CATHOLIC CHURCH IN THE NORTHERN TERRITORY ACT

As in force at 1 January 1991

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 January 1991

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## CATHOLIC CHURCH IN THE NORTHERN TERRITORY ACT

**An Act to provide for the establishment of Property Trusts in respect of the Catholic Church in the Northern Territory and for other purposes**

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Catholic Church in the Northern Territory Act*.

#### 2 Interpretation

(1) In this Act, unless the contrary intention appears:

***bishop***, in relation to a diocese, means the person for the time being ruling the diocese under and in accordance with the canon law of the Catholic Church, and includes an administrator apostolic and a vicar capitular.

***Catholic Church*** means the church which acknowledges that the Roman Pontiff for the time being is its spiritual head.

***diocese*** means a diocese of the Catholic Church, and includes an archdiocese.

***parish*** means a parish of a diocese.

***parish priest***, in relation to a parish of a diocese, means the person duly appointed by the bishop of the diocese as parish priest of the parish, and includes:

(a) in relation to a cathedral parish – the bishop of the diocese; and

(b) a priest appointed by the bishop to act for the time being:

(i) on behalf of the parish priest; or

(ii) as administrator of the parish.

***property trust*** means a property trust established under this Act.

***public officer***, in relation to a property trust established in respect of an institution or association, means the public officer of the property trust and includes any person for the time being exercising the powers of the public officer.

- (2) An institution or association shall not be held not to be Catholic by reason only that some of the members of the institution or association are not Catholic.
- (3) Where a diocese or parish extends beyond the Territory, this Act applies as if the diocese or parish, as the case may be, consisted only of so much of the diocese or parish as is within the Territory.
- (4) Where the cathedral of a diocese or the principal church of a parish is outside the Territory, this Act does not apply in relation to the diocese or parish, as the case may be, unless:
  - (a) in the case of a diocese – it has an address for service of notices in the Territory; or
  - (b) in the case of a parish – both it and the diocese of which it is a parish have addresses for service of notices in the Territory.

## **Part 2            Establishment of property trusts**

### **Division 1        Establishment**

#### **3                  Establishment by by-laws**

- (1) Subject to this Act, the bishop of a diocese may, by instrument in writing under his seal, make by-laws not inconsistent with this Act establishing a property trust in respect of:
  - (a) the diocese;
  - (b) a parish of the diocese; or
  - (c) a Catholic institution or association that has its principal address for service of notices in the diocese.
- (2) A bishop shall not make by-laws under subsection (1) in respect of an institution or association unless the persons having the management of the affairs of the institution or association have requested him to establish a property trust in respect of it.

#### **4            Amendment of by-laws**

- (1) Subject to this Act, the bishop of a diocese may, by instrument in writing under his seal, make by-laws not inconsistent with this Act to add to, amend or repeal by-laws of a property trust that:
  - (a) is established in respect of the diocese or a parish of the diocese; or
  - (b) has its principal address for service of notices in the diocese.
- (2) An instrument made under subsection (1) repealing all the by-laws of a property trust is of no effect unless it incorporates a certificate by the bishop who made the instrument that the property trust that is the subject of the instrument has no assets and no liabilities.

#### **5            Content of by-laws**

- (1) The by-laws of a property trust:
  - (a) shall prescribe the name of the property trust;
  - (b) in the case of a property trust established in respect of an institution or association, shall prescribe:
    - (i) the purposes of the property trust;
    - (ii) the membership of the property trust;
    - (iii) the designations of:
      - (A) the persons having the management of the affairs of the property trust;
      - (B) the public officer of the property trust; and
      - (C) the persons who may exercise the powers and functions of the public officer where there is no public officer or where the public officer is absent from the Territory or from his office or unable to act; and
    - (iv) the manner in which, subject to this Act, the property trust shall be bound; and
  - (c) may make provision, not inconsistent with this Act, for or in relation to the regulation, management and administration of the property trust.

- (2) The by-laws of a property trust may provide that a matter relating to the regulation, management or administration of the property trust may be provided for by rules, not inconsistent with this Act or the by-laws made by the property trust.

## **6            Gazettal**

Where the bishop of a diocese makes a by-law prescribing or amending:

- (a) the name of a property trust; or  
(b) the designation of the public officer of a property trust,

he shall cause to be published in the *Gazette* a statement relating to the effect of the by-law.

## **7            Name of property trust**

- (1) The first 6 words in the name of a property trust established in respect of a diocese or parish shall be "Catholic Church of the Diocese (*or* Archdiocese) of".
- (2) The name of a property trust shall include:
- (a) in the case of a property trust established in respect of a diocese – the name of the diocese;
- (b) in the case of a property trust established in respect of a parish of a diocese – the name of the diocese and the name of the parish; and
- (c) in the case of a property trust established in respect of an institution or association – the word "Catholic".
- (3) The last 2 words in the name of a property trust shall be "Property Trust".

## **8            Purposes**

- (1) The purpose of a property trust established in respect of a diocese or parish shall be, and each purpose of a property trust established in respect of an institution or association shall be related to, the advancement of the work of the Catholic Church in the Northern Territory.

- (2) In particular, and without limiting the generality of subsection (1), a property trust may, subject to its by-laws:
- (a) perform works and provide services that:
    - (i) are of a religious, educational, charitable, social or benevolent nature; or
    - (ii) relate to health or welfare; and
  - (b) do anything that is required or permitted to be done, or necessary or convenient to be done, ancillary to the work of the Catholic Church in the Northern Territory.

## **9            Dioceses and parishes**

- (1) A property trust established in respect of a diocese subsists in the bishop of the diocese.
- (2) A property trust established in respect of a parish subsists in the parish priest of the parish.

## **10          Commencement of by-laws**

By-laws made under this Act take effect from the date on which they are made or, where a later date is provided for in the by-laws, that later date.

## **Division 2            Effect of establishment**

### **11          Perpetual succession, &c.**

- (1) A property trust:
  - (a) is a body corporate with perpetual succession and a common seal;
  - (b) subject to this Act and the by-laws of the property trust, may acquire, hold and dispose of real and personal property; and
  - (c) may sue and be sued in its corporate name.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of a property trust affixed to a document and shall presume that it was duly affixed.

## **12            Powers**

- (1) A property trust has power to do all things necessary or convenient to be done for or in connection with or incidental to the carrying out of its purposes, the performance of its functions and the exercise of its powers.
- (2) Without limiting the generality of subsection (1), a property trust may, subject to its by-laws:
  - (a) raise or borrow money with or without security; and
  - (b) act as trustee of any property or as executor, administrator or trustee of any estate.

## **13            Vacancies**

The exercise of a power or the performance of a function by a property trust is not affected by reason only of a vacancy in the membership of the trust or of the governing body of the trust or of the office of public officer of the trust.

## **14            Trading, &c.**

A property trust shall not be established under this Act for the purpose of trading or securing pecuniary profit to its members.

## **Division 3            Property**

### **15            Signature, &c.**

- (1) A property trust may sign an instrument:
  - (a) in the case of a property trust established in respect of a diocese or parish – by the writing of the person in whom the property trust subsists; and
  - (b) in the case of a property trust established in respect of an institution or association – by the writing of the public officer of the property trust,

and an instrument so signed is as valid, effectual and enforceable as it would have been if the property trust had been a natural person and had itself signed the instrument.

- (2) The person by whose writing a property trust may sign an instrument in pursuance of subsection (1) may, on behalf of the property trust, for the purposes of the exercise of a power by the property trust, swear an oath or make an affirmation or declaration, and an oath so sworn or an affirmation or declaration so made shall



be received for all purposes as though the property trust had been a natural person and had itself sworn or made it.

## **16 Common fund**

- (1) It is lawful for a property trust to lend moneys held by it (including trust moneys) to a property trust established in respect of a diocese to be invested as one fund together with moneys held by that second-mentioned property trust (including trust moneys) and with moneys held by other property trusts.
- (2) A property trust established in respect of a diocese:
  - (a) may invest moneys available to it for investment in pursuance of subsection (1);
  - (b) may lend moneys so available to it to another property trust for the purposes of that last-mentioned property trust; and
  - (c) may make advances out of moneys so available to it for any purpose of or relating to the Catholic Church in the Northern Territory.
- (3) Where a property trust established in respect of a diocese lends money under subsection (2)(b) or makes an advance under subsection (2)(c):
  - (a) the bishop of the diocese shall declare a rate of interest in relation to the loan or advance;
  - (b) the loan or advance shall be deemed to be an investment of the money so loaned or advanced and shall bear interest at the rate so declared; and
  - (c) the amount of the loan or advance and the interest thereon shall be deemed to be a charge on the assets from time to time of:
    - (i) in the case of a loan – the property trust to which the loan was made; or
    - (ii) in the case of an advance – the property trust established in respect of the diocese,  
  
rateably in favour of the persons who have loaned money to the fund under subsection (1).
- (4) Where moneys are invested by a property trust established in respect of a diocese in pursuance of subsection (1), it shall distribute income arising from those investments rateably among

the several purposes for which the moneys so invested are held, and any loss arising from any such investments shall likewise be borne rateably.

## **17        Vesting of property**

- (1) Subject to this section, the bishop of a diocese in which a property trust has its principal address for service of notices may, by instrument in writing under his seal, declare that an asset of another property trust is vested in that first-mentioned property trust subject to the trusts, reservations, mortgages, charges, liens, encumbrances, loans and leases to which it was subject immediately before the declaration.
- (2) A bishop shall not make a declaration under subsection (1) in relation to an asset:
  - (a) except with the consent of both property trusts referred to in that subsection in relation to the asset; or
  - (b) with intent to defraud, defeat or delay a creditor of a property trust.
- (3) A declaration made under subsection (1) has effect according to its tenor.
- (4) Notwithstanding subsection (3), a property trust that is divested of an asset by a declaration made under subsection (1) is jointly and severally liable with the property trust in which the asset vests by that declaration in respect of:
  - (a) a cause of action in relation to the asset that arose before the declaration was made; and
  - (b) a breach of contract in relation to a trust, reservation, mortgage, charge, lien, encumbrance, loan or lease to which the asset was subject immediately before the declaration,but that first-mentioned property trust shall be indemnified by the second-mentioned property trust for any loss that it suffers in meeting its liability under this section.
- (5) The Registrar-General, or any registrar or other person whose duty it is to register or record a dealing with, or certify title in relation to, an asset that is the subject of a declaration made under subsection (1), shall, notwithstanding the provisions of the *Real Property Act*, without transfer and without fee, upon application in writing by the bishop who made the declaration accompanied by a copy of the declaration, do all things that are necessary or convenient to be done by him:

- (a) to register or record the interest in the asset of the property trust in which the asset has vested by virtue of subsection (3); and
- (b) to release to that property trust such documents, if any, of title as could, immediately before the declaration, be claimed by the other property trust.

## **18        Trusts**

- (1) Where a property trust holds property in trust and the bishop of the diocese in which the property trust has its principal address for service of notices is satisfied that it is impossible or inexpedient to carry out or observe the terms of the trust, the bishop may, by instrument in writing under his seal, declare that the property is held in trust for such other purposes as are specified in the declaration.
- (2) In making a declaration under subsection (1), a bishop shall take into account the terms on which the property was held in trust before the declaration was made.
- (3) Upon the making of a declaration under subsection (1) in relation to property, the property trust holding the property holds the property on the trusts specified in the declaration.

## **19        Wills, &c.**

- (1) Unless the contrary intention appears in the will, deed or other instrument, a reference in a will, deed or other instrument to a gift or disposition of property to:
  - (a) a diocese, the bishop of a diocese or the Catholic Church in a diocese in respect of which a property trust has been established – shall be read as a reference to a gift or disposition, as the case may be, to that property trust; or
  - (b) a parish, the parish priest of a parish or the Catholic Church in a parish in respect of which a property trust has been established – shall be read as a reference to a gift or disposition, as the case may be, to that property trust.
- (2) Where, by a will, deed or other instrument, it appears that there is an intention on the part of the person making a gift or disposition to give or otherwise dispose of property to or for the benefit of the Catholic Church, a Catholic work or a Catholic person, institution or association and the gift or disposition cannot otherwise take full effect, it shall have effect, to the extent that it would not otherwise have effect, as a gift or disposition, as the case may be, to the property trust established in respect of the Diocese of Darwin.

## **Part 3            General**

### **Division 1        Service of notices**

#### **20            Notification of address**

- (1) A property trust shall, upon its establishment, cause its principal address for service of notices to be published in the *Gazette*.
- (2) A property trust shall, upon a change of its principal address for service of notices, cause the new address to be published in the *Gazette*.

#### **21            Service of notices**

- (1) A person may serve a notice on a property trust by sending the notice by post addressed to:
  - (a) the property trust; or
  - (b) the person by whose writing the property trust may sign an instrument by virtue of section 15,

at the last-known principal address of the property trust for service of notices.

- (2) A property trust may give notice to any person under its seal or under the hand of the person by whose writing the property trust may sign an instrument by virtue of section 15.

### **Division 2        Winding up**

#### **22            Repeal of by-laws**

Upon the coming into effect of a by-law repealing all the by-laws of a property trust, the property trust ceases to be established under this Act.

#### **23            Corporations Law**

Subject to this Division, the provisions of the Corporations Law relating to the winding up of Part 5.7 bodies apply to and in relation to the winding up of a property trust and, in that application:

- (a) a reference in the Corporations Law to a Part 5.7 body shall be read as a reference to a property trust;
- (b) a reference in the Corporations Law to the directors of a company shall be read as a reference to the persons having the management of the affairs of a property trust;

- (c) a reference in the Corporations Law to the secretary of a company shall be read as a reference to the person by whose writing a property trust may sign an instrument by virtue of section 15; and
- (d) a reference in the Corporations Law to the principal place of business of a company shall be read as a reference to the principal address of a property trust for service of notices.

**24            Liability of members**

A member of a property trust is not liable, except as provided in the by-laws relating to the trust, to contribute towards the payment of the debts and liabilities of the trust or the costs, charges and expenses of a winding up of the trust.

**25            Assets remaining**

The assets remaining from the winding up of a property trust after payment of the debts and liabilities of the trust and costs, charges and expenses of the winding up shall be paid to the property trust established in respect of the diocese in which the trust which was wound up last had its principal address for service of notices.

**Division 3            Evidentiary**

**26            Proof of signature, &c.**

- (1) A certificate, given under seal by the bishop of the diocese in which a property trust has its principal address for service of notices:
  - (a) that a certificate or document in relation to the trust was or was not signed by a person;
  - (b) that a person was or was not, on a certain day, a member of the trust; or
  - (c) that a person was or was not, on a certain day, the public officer of the trust,

is evidence of the facts stated in the certificate and all courts, judges and persons acting judicially shall take judicial notice of the signature of a bishop on such a certificate.

- (2) A certificate, given by the person by whose writing a property trust may sign an instrument in pursuance of section 15, that a document or writing is a true copy of a decision of the trust duly made is evidence of the facts stated in the certificate.

**27            Application of moneys**

- (1) Neither:
- (a) a person dealing with; nor
  - (b) the Registrar-General, or any registrar or other person registering a dealing with or certifying title in relation to a dealing with,
- a property trust is bound to inquire into the propriety or necessity of an apparent dealing by the trust with property held by it.
- (2) A person paying money to a property trust is not bound to see to the application of the money.

**Division 4            Miscellaneous**

**28            Delegation**

- (1) The bishop of a diocese may, either generally or otherwise as provided in the instrument of appointment, by writing under his hand appoint a person to be his deputy, delegate or proxy for the purposes of a provision of this Act:
- (a) for all purposes or for a specified purpose or purposes; and
  - (b) without limitation as to time or for a specified period or during an absence, or all absences, of the bishop or an inability, or all incapacities, of the bishop to act, or otherwise as provided in the instrument of appointment.
- (2) Where a bishop appoints a person under subsection (1) to be a deputy, delegate or proxy:
- (a) the person may act as deputy, delegate or proxy, as the case may be, in accordance with the instrument of appointment;
  - (b) a reference in this Act to the bishop shall, unless the contrary intention appears, be read as including a reference to the deputy, delegate or proxy acting in accordance with the instrument of appointment; and
  - (c) if a property trust subsists in the bishop, a reference in this Act to the person in whom the property trust subsists or to the person by whose writing the property trust may sign an instrument shall, unless the contrary intention appears, be read as including a reference to the deputy, delegate or proxy acting in accordance with the instrument of appointment.

- (3) An appointment under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the bishop.

**29            *Interpretation Act***

By-laws made under this Act are not regulations, rules or by-laws within the meaning of the *Interpretation Act*.

**30            *Transitional***

- (1) Upon the establishment of a property trust in respect of the Diocese of Darwin:

(a) the assets and liabilities of the Catholic Church of the Diocese of Darwin Incorporated, an incorporated association within the meaning of the *Associations Incorporation Act*, vest by force of this section in that property trust, subject to the trusts, reservations, mortgages, charges, liens, encumbrances, loans and leases to which they were subject immediately before that property trust was established; and

(b) the Catholic Church of the Diocese of Darwin Incorporated ceases to be and to be deemed to be an incorporated association within the meaning of the *Associations Incorporation Act*.

- (2) The Registrar-General, or any registrar or other person whose duty it is to register or record a dealing with, or certify title in relation to, an asset or liability that is vested in a property trust by force of subsection (1), shall, notwithstanding the provisions of the *Real Property Act*, without transfer and without fee, upon application in writing by the Bishop of the Diocese of Darwin, do all things that are necessary or convenient to be done by him:

(a) to register or record the interest in the asset or liability of the property trust; and

(b) to release to the property trust such documents, if any, of title as could, immediately before that property trust was established, be claimed by the Catholic Church of the Diocese of Darwin Incorporated in relation to the asset or liability.

**31            *Where there are no members***

Where a property trust has no public officer and no membership, the Bishop of the Diocese of Darwin shall have and may exercise all the powers of:

- (a) the public officer of the trust;

- (b) the trust; and
- (c) the persons having the management of the affairs of the trust,  
and of each of those persons,

and he may take any action that is necessary or convenient to be taken for the purpose of continuing or discontinuing the existence of the trust.



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**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*****Catholic Church in the Northern Territory Act 1979 (Act No. 119, 1979)***

Assent date	15 October 1979
Commenced	15 October 1979

***Companies and Securities (Consequential Amendments) Act 1986 (Act No. 18, 1986)***

Assent date	30 June 1986
Commenced	1 July 1986 (s 2)

***Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)***

Assent date	14 December 1990
Commenced	1 January 1991 (s 2, s 2 <i>Corporations (NT) Act 1990</i> (Act No. 56, 1990) and Gaz S76, 21 December 1990)

**3****LIST OF AMENDMENTS**

s 23                      amd No. 18, 1986, s 3; No. 59, 1990, s 4