

# Coptic Orthodox Church (NSW) Property Trust Act 1990



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**His Holiness Pope Tawadros II**

Pope of Alexandria & the Patriarch of  
the See of St Mark

Date:

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## LONG TITLE

An Act to constitute the Coptic Orthodox Church (NSW) Property Trust and to specify its functions, and to provide for the vesting of certain property in the Trust.

## PART 1—PRELIMINARY

### 1 Name of Act

This Act may be cited as the *Coptic Orthodox Church (NSW) Property Trust Act 1990*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**"appointed day"** means the day on which section 4 commences.

**"Bishop"** means the Bishop of the Church or, if the Bishop of the Church is unable to perform the functions of office, or there is a vacancy in the See, the person appointed by the Pope for the time being entitled to perform the functions of the office of Bishop.

**"Church"** means the Coptic Orthodox Churches, Diocese of Sydney and Affiliated

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Regions, a part of the Coptic Orthodox Church of Egypt, a hierarchical Christian body whose leader, overseer and shepherd is the Pope of Alexandria and Patriarch of the See of St. Mark, and includes any Church entity.

**"Church entity"** means a body, corporate or unincorporate, established by the Church after the appointed day which:

- (a) has objectives not inconsistent with those of the Church as set out in the constitution, and
- (b) is certified in writing by the corporate trustees to be a Church entity for the purposes of this Act.

**"constitution"** means the constitution of the Church approved on 8 October 2002 by His Holiness Shenouda III, Pope of Alexandria and Patriarch of the See of St. Mark, as amended from time to time, or any document for the time being approved by the Pope of Alexandria and Patriarch of the See of St. Mark to replace that constitution.

**"conveyance"** includes transfer, assignment and assurance.

**"corporate trustees"** and **"corporate body of trustees"** includes corporate bodies of trustees now or hereafter to be constituted for the Church under this Act.

**"Pope"** means the leader, overseer and shepherd of the Church being the Pope of Alexandria and Patriarch of the See of St. Mark.

**"Trust"** means the Coptic Orthodox Church (NSW) Property Trust constituted by this Act.

**"trust property"** means property vested in or acquired by the Trust.

(2) In this Act:

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- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—CONSTITUTION AND FUNCTIONS OF THE TRUST**

### **4 Constitution of the Trust**

- (1) There is constituted by this Act a corporation under the corporate name of the Coptic Orthodox Church (NSW) Property Trust.
- (2) The members of the corporate body of trustees for the Trust shall not be less than 9 members and shall be constituted as follows:
  - (a) 1 member shall be the Bishop; and
  - (b) The other 8 members shall be members of the Church whose nomination has been approved in writing by the Pope.
- (3) The Bishop must cause a notice to be published in the Government Gazette appointing a day as the day on which the members of the corporate body of trustees are appointed.
- (4) The notice must include the names of the members of the corporate body of trustees of the Trust.
- (5) Upon a change in the membership of the corporate body of trustees, the Bishop must cause a notice to be published in the Government Gazette of the names of the appointed members of the corporate body of trustees.

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- (6) On the appointed day all properties and rights vested in or held by the Bishop on trust for the Church or for the purposes of the Church shall vest in the Trust.

## 5 Functions of the Trust

- (1) The functions of the Trust are:
- (a) to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property as trustee for, or for the purposes of, the Church, and
  - (b) to acquire property by gift or by devise or bequest and to agree to and carry out the conditions of the gift, devise or bequest, and
  - (c) to borrow money for the purposes of the Church, and
  - (d) to mortgage, charge or otherwise encumber trust property, and
  - (e) to do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for or incidental to the exercise of its functions under this Act.
- (2) This section does not limit section 50 of the *Interpretation Act 1987*.

## 5A Variation by Pope of Members of the Corporate Body of Trustees

- (1) It shall be lawful for the Pope, by written decree, to vary the members of the corporate body of trustees and to appoint or remove a person to the position of members of the corporate body of trustees.

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## 5B Vacation of Office

- (1) If the office of Bishop is vacant, or, if the Bishop of the Church is unable to perform the functions of office, the Pope may appoint a person to perform the functions of the office of Bishop.
- (2) If a person is so appointed, a reference to the Bishop in this Act is a reference to the appointed person, until such time as the Pope may determine.
- (3) The office of a member of the corporate body of trustees becomes vacant if the member—
  - (a) dies; or
  - (b) resigns his or her office by notice in writing to the Trust; or
  - (c) becomes insolvent; or
  - (d) becomes a represented person within the meaning of the Guardianship Act 1987; or
  - (e) is removed by the Pope.

## PART 3—ACQUISITION AND VESTING OF CERTAIN TRUST PROPERTY

### 6 Vesting of certain trust property on the appointed day

- (1) Any property that, immediately before the appointed day, was vested in any other person in trust for the Church, is, on that day, divested from that other person and is, to the extent that it was so vested, vested (without conveyance) in the Trust.

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- (2) The vesting of the property in the Trust does not affect:
- (a) any reservation, mortgage, charge, encumbrance, lien or lease that affected the property, or
  - (b) any trust on which the property was held,
- immediately before the vesting of the property.
- (3) No attornment to the Trust by any lessee of land vested in it by this section is necessary.
- (4) An instrument executed only for:
- (a) the purpose of giving effect to this section, or
  - (b) a purpose ancillary to, or consequential on, the operation of this section,
- is exempt from stamp duty.

## 7 Vesting of certain trust property after the appointed day

To the extent to which, by an instrument (including a will) that takes effect on or after the appointed day, any property:

- (a) is given to the Church or to a person (other than the Trust) for the benefit of the Church, or
- (b) is payable to, or receivable by, the Church or any person (other than the Trust) on behalf of the Church, or

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- (c) is recoverable by the Church or by any person (other than the Trust) for the Church,

a reference in the instrument to the Church, or to that person, is to be taken to be a reference to the Trust.

## PART 4—PARTICULAR POWERS OF THE TRUST

### 8 Trust may hold property jointly

The Trust may hold or acquire property either alone or jointly as a joint tenant or tenant-in-common.

### 9 Investment

- (1) The Trust may invest or lend any funds held by it in accordance with the terms of any trust to which the funds are subject.
- (2) The Trust may also invest or lend any such funds in accordance with the *Trustee Act 1925* unless the investment or loan is expressly forbidden by the instrument (if any) creating the trust to which the funds are subject.

### 10 Blending of trust funds

- (1) The Trust may invest trust funds held by it for different purposes or activities, or any part of those funds, as one fund ("**the fund**").

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- (2) Any income arising from the investment of the fund may be distributed rateably for the benefit of carrying out the several purposes or activities for which the money invested is held on trust.
- (3) Any loss arising from the investment of the fund is to be distributed rateably to the detriment of carrying out the several purposes or activities for which the money invested is held on trust.
- (4) The Trust may make advances out of funds referred to in this section for any purpose of or relating to the Church.
- (5) Any sum so advanced is to be taken to be an investment of the money and bears interest at a rate fixed by the Trust.
- (6) The sum advanced, and any interest on that sum, is to be taken to be a charge on the assets held by the Trust for the purpose for which the advance is made.

## 11 Co-operative use of property

- (1) In this section, "**scheme of co-operation**" means a scheme entered into by the Trust:
  - (a) with or involving a church of another denomination or any congregation or activity of such a church, and
  - (b) concerning the use of trust property.
- (2) The Trust may permit trust property to be used, managed and administered for the purposes of a scheme of co-operation on such terms and conditions as the Trust determines.

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- (3) Any proceeds obtained by the Trust from a scheme of co-operation are to be applied in the manner determined by the Trust.
- (4) Conditions that the Trust may determine under this section include:
  - (a) conditions with respect to the making of monetary contributions for the acquisition, construction, alteration, maintenance or repair of property vested in or held on behalf of a co-operating church or congregation, and
  - (b) the giving or taking of a security or charge over any property.
- (5) Trust property may be used pursuant to a scheme of co-operation except to the extent that the property is subject to an express trust expressly forbidding its use in that manner.
- (6) Trust property merely directed to be held on trust for the worship or purposes of the Church is not to be taken to be property that is subject to an express trust expressly forbidding its use pursuant to a scheme of co-operation.

## 12 Variation of trusts

- (1) The Trust may declare that, in its opinion, it has become impossible or inexpedient to carry out or observe the terms of a trust of property vested in it, whether as to its purpose or any other of its terms.
- (2) The Trust may by the same or a later declaration declare that the property is subject to another trust and if so:
  - (a) the replaced trust ceases and determines, and
  - (b) the property is to be held subject to the other trust.

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- (3) In making such a declaration the Trust must ensure that the property is to be dealt with as nearly as may be possible for the purposes for which the property was held immediately before the declaration.
- (4) The Trust may declare that, in its opinion, it is impossible or inexpedient to deal with the property in accordance with subsection (3) because of circumstances arising after the creation of the replaced trust.
- (5) On making a declaration under subsection (4), the Trust may hold, dispose of or otherwise deal with and apply the property for such purposes for the use and benefit of the Church as the Trust declares.

### 13 Trust may act as executor, administrator or trustee

- (1) The Trust may:
  - (a) apply for and obtain, or join in applying for and obtaining, probate of the will, or letters of administration of the estate, of a deceased person if the Church has a beneficial interest, vested or contingent, in the estate of that person, or
  - (b) accept appointment, and act, as trustee or co-trustee under and in pursuance of any trust if the trust property is not vested in the Trust by, or pursuant to, this Act, and the trust was created wholly or partly for the benefit of the Church,

and may do all things necessary for the exercise of its functions as executor, administrator or trustee, as the case may be.

- (2) On behalf of the Trust, a person employed by the Trust may, if authorised in writing by the Trust for the purpose, swear an affidavit, make a declaration or statement, give security and do any other act or thing that is, by any

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charter, Act or rule of court, required to be done by a person applying for or granted probate or letters of administration, or administering a trust, as the case may be.

- (3) The Trust may:
- (a) renounce executorship, or
  - (b) decline to act as administrator of an estate, or
  - (c) retire, or decline to act, as trustee of property (not being property vested in it by or pursuant to Part 3).
- (4) Any commission or other remuneration earned by the Trust as an executor, administrator or trustee appointed under the authority of this section belongs to the Trust and is to be used and applied by it for or towards any object or purpose specified or approved by the Trust.

## 14 Claims for compensation on compulsory acquisition etc

In relation to the exchange, dedication or compulsory acquisition of any trust property, the Trust may, subject to the constitution:

- (a) act on behalf of the Church and make claims for compensation, and
- (b) agree to and settle any such claims for such amount, and on such terms and conditions, as it thinks fit.

## PART 5—GENERAL

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## 15 Seal

- (1) The seal of the Trust is to be kept by the members of the corporate body of trustees and is to be affixed to a document only:
  - (a) with the authority of a resolution of the corporate body of trustees, and
  - (b) in the presence of two members of the corporate body of trustees, and
  - (c) with an attestation by the signature of 2 members of the corporate body of trustees of the fact of the affixing of the seal.
- (2) An instrument purporting to have been sealed with the seal of the Trust and purporting to have been signed by 2 members of the corporate body of trustees is to be taken to have been executed in accordance with this section.

## 16 Form and execution of certain contracts etc

- (1) Any instrument relating to any property or matter which, if made or executed by an individual, would be by law required to be in writing under seal may be made on behalf of the Trust in writing under the seal of the Trust.
- (2) Any instrument relating to any property or matter which, if made by or between individuals, would be by law required to be in writing signed by the parties to be bound by it may be made on behalf of the Trust in writing by any person acting under its authority, express or implied.
- (3) Any contract relating to any property or matter which, if made between individuals, would be by law valid although made orally only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority, express or implied.

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## 17 Execution under seal by agent etc

- (1) The Trust may, by writing under its seal, expressly empower any person, in respect of any specific matter, to execute any deed, instrument, contract or agreement on its behalf as its agent or attorney.
- (2) Any deed signed by such an agent or attorney under his or her seal on behalf of the Trust binds the Trust and has the same effect as if it were under the seal of the Trust.

## 18 Evidence

- (1) A certificate under the seal of the Trust to the effect that property specified in the certificate is held by it on trust for the Church is, in any legal proceedings, prima facie evidence that the property is so held.
- (2) A certificate under the seal of the Trust to the effect that the estate or interest of a person specified in the certificate in land so specified is an estate or interest vested in the Trust by this Act is, for the purposes of any application by the Trust to be registered under the *Real Property Act 1900* as the proprietor of that estate or interest pursuant to the vesting, conclusive evidence of the matters so certified.

## 19 Receipt for certain money

If a receipt for money paid to the Trust:

- (a) is executed under the seal of the Trust, or
- (b) (Repealed)

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Vicar General of the Coptic Orthodox  
Diocese of Sydney & its Affiliated  
Regions

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**Dr Medhat Guirgis**

Trustee of the Coptic Orthodox  
Diocese of Sydney & its Affiliated  
Regions

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**Mr Naguib Kaldas**

Trustee of the Coptic Orthodox  
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- (c) is in writing signed by a person or persons purporting to be duly authorised for the purpose by the Trust,

the receipt exonerates the person by whom or on whose behalf the money is paid from any liability for the loss, misapplication or non-application of the money.

## 20 Exoneration from inquiry

If the Trust purchases, sells, exchanges, mortgages, leases or otherwise deals with property:

- (a) a vendor, purchaser, mortgagee, lessee or other person who is a party to any such dealing, and
- (b) the Registrar-General, the Crown Solicitor or any other person registering or certifying title to the property,

do not have to inquire whether the Trust has power to so deal with the property and are not affected by notice that the Trust has no such power.

## 21 Indemnification of certain persons

The members of the corporate body of trustees and any other person, exercising in good faith a function in relation to trust property pursuant to this Act or any by-law, and their executors and administrators, are entitled to be indemnified out of trust property against all expenses and liabilities incurred by them in connection with the exercise of the function.

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**His Holiness Pope Tawadros II**

Pope of Alexandria & the Patriarch of  
the See of St Mark

Date:

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**His Eminence Metropolitan Tadros**

Bishop of the Coptic Orthodox Diocese  
of Port Said, & Papal Representative  
for the Coptic Orthodox Diocese of  
Sydney & its Affiliated Regions

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**His Grace Bishop Daniel**

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## 22 Service of documents

The service of any document on the Trust may be effected by serving it on the Bishop, or on any person appearing to be authorised by the Trust to accept service.

## 23 By-laws

- (1) The Trust may make by-laws, not inconsistent with this Act or with the provisions of the constitution, for the control, management and administration of, and dealings with, trust property.
- (2) A certificate under the seal of the Trust to the effect that a by-law specified in the certificate, or in an annexure to the certificate, was in force on a day specified in the certificate is conclusive evidence that the by-law was in force on that day.
- (3) A by-law may be amended or repealed by a subsequent by-law made under this section.

## 24 Savings and transitional provisions

Schedule 1 has effect.

# SCHEDULE 1 SAVINGS AND TRANSITIONAL PROVISIONS

(Section 24)

## 1 Claims and liabilities

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- (1) In this clause, "**former trustee**" means a company or any other person in whom, immediately before the appointed day, property was vested in trust for the Church.
- (2) On and from the appointed day, in relation to property vested in the Trust pursuant to section 6:
  - (a) the rights and liabilities of a former trustee become rights and liabilities of the Trust to be exercised and discharged in accordance with this Act, and
  - (b) the obligations of a former trustee become obligations of the Trust to be performed in accordance with this Act, and
  - (c) proceedings before a court or tribunal by or against a former trustee that, immediately before the appointed day, were pending or in the course of being heard become proceedings by or against the Trust, and
  - (d) to the extent to which an act, matter or thing done or omitted to be done on behalf of a former trustee had any force or effect immediately before the appointed day, it becomes an act, matter or thing done or omitted to be done by the Trust, and
  - (e) a reference in any instrument to a former trustee becomes a reference to the Trust, and
  - (f) time that had commenced to run in relation to a former trustee becomes time that had commenced to run in relation to the Trust.

for disclosure purposes

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