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ELIZABETHAE II REGINAE

A.D. 1971

No. 60 of 1971

An Act to provide for the creation of a corporate body of trustees to hold and exercise proprietary rights in and in relation to property belonging to or held in trust for or in connection with the Presbyterian Church of South Australia, and for other purposes.

[Assented to 14th October, 1971]

WHEREAS by The Presbyterian Church of South Australia Act Preamble. passed in the year 1899 it was enacted, *inter alia*, that all lands, hereditaments, estates, and temporal privileges, and all equitable rights belonging to certain sections of the Presbyterian Church of South Australia and the congregations thereof shall belong to The Presbyterian Church of South Australia and to the several congregations thereof subject to the decisions and judicatories of that church only:

AND WHEREAS it is expedient and desirable that a corporate body of trustees should be created for the purpose of holding, and exercising proprietary rights in, and in relation to, property belonging to or held in trust for or in connection with that church or any congregation thereof and that for the better management thereof the estate or interest in certain of such property should be effectively assigned, conveyed or transferred to and vested in such corporate body:

AND WHEREAS on the twenty-fourth day of July, 1901, the Presbyterian Church of New South Wales (now known as the Presbyterian Church of Australia in the State of New South Wales), the Presbyterian Church of Victoria, the Presbyterian Church of

Queensland, the Presbyterian Church of South Australia, the Presbyterian Church of Tasmania and the Presbyterian Church in Western Australia agreed to unite on the basis of a Scheme of Union whereby there was constituted a body known as the Presbyterian Church of Australia within which those churches continued to exist as part of a federal ecclesiastical structure:

AND WHEREAS it is also expedient that the General Assembly of the Presbyterian Church of Australia so constituted should have the power to enter into union with other churches subject to due and proper safeguards for minorities:

BE IT THEREFORE ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

1. This Act may be cited as the "Presbyterian Trusts Act, 1971".

Interpretation.

2. In this Act, unless the contrary intention appears—

"property" means any estate or interest in land granted or reserved by the Crown for any of the purposes of The Presbyterian Church of South Australia or of any of the sections of the church mentioned in The Presbyterian Church of South Australia Act passed in the year 1899 or of any body which has since acceded to the Church, and includes any estate or interest in any property, real or personal, including money and securities for money held by or vested or purporting to be vested in or claimable by any person or persons either in trust generally for the Church or for any congregation thereof or for any special purpose in connection therewith or for the benefit or use of the members thereof as such or of any person or persons for the time being holding office therein:

"rule" or "regulation"—

(a) in relation to the General Assembly, means rule or regulation, as the case may be, lawfully made by the General Assembly in accordance with the rules, practices and usages of the Church;

and

(b) in relation to a congregation, means rule or regulation as the case may be, lawfully made by that congregation in accordance with the rules, practices and usages of the Church:

"the Church" means The Presbyterian Church of South Australia:

"the corporate body" means the corporate body of trustees incorporated as a body corporate pursuant to section 5 of this Act:

“the General Assembly” means the General Assembly of the Presbyterian Church of South Australia convened as a court of the Church in accordance with the rules, practices and usages of the Church:

“the incorporated General Assembly” means The General Assembly of the Presbyterian Church of South Australia, Incorporated:

“the Moderator” means the Moderator for the time being of the General Assembly:

“trustee”, in relation to a congregation of the Church, includes that congregation as incorporated under the Associations Incorporation Act, 1956, as amended.

3. The General Assembly may, by resolution, resolve—

General Assembly may resolve to form a corporate body of trustees.

(a) that a corporate body of trustees be constituted for the purposes of this Act and that its name shall be as specified in the resolution;

(b) that the persons nominated in the resolution as members of the corporate body and their successors in office appointed as provided in this Act be the corporate body of trustees;

and

(c) that those persons and their successors in office as so appointed be incorporated under the name specified in the resolution.

4. Within a period of thirty days after the making of the resolution the Moderator shall give public notice thereof by causing it to be published at length on the same day in the *Gazette* and at least one newspaper circulating generally throughout the State and shall by notice under his hand published on that day in the *Gazette* and that newspaper fix the day on which the corporate body of trustees is to be constituted for the purposes of this Act, being a day not earlier than the thirtieth day after the day on which the notice is so published.

Resolution to be published.

5. (1) Upon the day fixed pursuant to section 4 of this Act the persons nominated in the resolution of the General Assembly as members of the corporate body and their successors in office to be appointed as provided in this Act shall become incorporated as a body corporate, whose name shall be as specified in the resolution, with perpetual succession and a common seal.

Incorporation of corporate body of trustees.

(2) Subject to this Act, the corporate body may—

(a) sue and be sued;

(b) acquire, take and hold property on behalf of or in trust for the Church or any congregation thereof;

- (c) receive and hold any moneys which have been or shall be given or contributed by any person or persons to be applied to any of the purposes of the Church or any congregation thereof;
- (d) take over any securities for money held by any person or persons on behalf of or in trust for the Church or any congregation thereof or for any special purpose in connection with the Church or any congregation thereof;
- (e) take in its name any securities for money belonging to the Church or such congregation which has been or shall be lent or advanced on account of the Church or any congregation thereof;

and shall, and shall have power to—

- (f) deal with all such property, moneys and securities so as to give effect to the trusts to which they may be specially subject or where they are not specially subject to any trust, in such manner as is provided in this Act or the General Assembly may from time to time direct.

(3) Subject to the Trustee Act, 1936, as amended, the corporate body shall have and may exercise any of the powers conferred upon trustees by that Act.

Appointment of successors to first members of corporate body.

6. The successors to the first members of the corporate body who become incorporated as the corporate body shall be appointed in such manner and shall hold office for such terms and upon such conditions and vacancies in such offices shall be filled in such manner as the General Assembly shall by rule or regulation from time to time prescribe.

Successor in office to become member of corporate body in place of predecessor.

7. Where a person who becomes a member of the corporate body by virtue of his office, whether clerical or lay, ceases to hold such office, his successor in that office shall, upon the Moderator furnishing the corporate body with a certificate certifying that that person has vacated that office and his successor named therein has been appointed and has assumed office, become a member in the place of that person.

Transfer of property to corporate body.

8. (1) Subject to this Act, at any time after the incorporation of the corporate body—

- (a) the estate or interest of any person or persons in all or any property held by him or them on behalf of or in trust for the Church generally;
- (b) the estate or interest of any person or persons in all or any property which is held on behalf of or in trust for or is

occupied or used by or for the purposes of any congregation of the Church or of the minister thereof;

- (c) the estate or interest of the incorporated General Assembly in all or any property held by it and in all or any securities taken for money advanced by it;

and

- (d) the estate or interest of any person in all or any property held by him immediately before the incorporation of the corporate body on behalf of or in trust for the Church or for any special purpose in connection therewith, situated in any place in which no congregation, being or forming a settled charge of the Church and recognized as such by the General Assembly, exists,

may be assigned, conveyed or transferred to and held by the corporate body.

(2) In the case of any land not under the provisions of The Real Property Act, 1886, as amended, which is subject to any mortgage, charge or encumbrance, no conveyance or transfer of the land in favour of the corporate body shall have any force or effect unless the corporate body has, by memorandum in writing endorsed upon the deed of conveyance or instrument of transfer, undertaken to answer and undertake the liability in respect of that mortgage, charge or encumbrance.

(3) Subject to this Act, where any property is held in trust for or on behalf of the Church or for any special purpose in connection therewith, the trustees or a majority of them may, with the approval of the General Assembly, assign, convey or transfer or execute or join in the execution of a deed of assignment or conveyance or memorandum of transfer assigning, conveying or transferring their estate or interest in the property to the corporate body upon the trusts to which the property is subject and such assignment, conveyance or transfer, when accepted in writing by the corporate body shall, as from the date of such acceptance, operate as a discharge from the duties of the trust of all the trustees who, immediately before such date, were holding the property as such and as the appointment of the corporate body as trustee in their place.

(4) Subject to this Act, where any property is held in trust for or on behalf of or occupied or used by or for the purpose of any congregation of the Church or the Minister thereof, the trustees thereof or a majority of them may, with the consent of not less than two-thirds of the number of the members and adherents of that congregation present in person or by proxy (where attendance and voting by proxy is allowed by the rules or regulations of the congregation or the General Assembly) at a meeting duly convened for that purpose, and with the approval of the General Assembly, assign,

convey or transfer or execute or join in the execution of a deed of assignment or conveyance or memorandum of transfer assigning, conveying or transferring their estate or interest in the property to the corporate body upon the trusts to which the property is subject and such assignment, conveyance or transfer, when accepted in writing by the corporate body shall, as from the date of such acceptance, operate as a discharge from the duties of the trust of all the trustees who, immediately before such date, were holding the property as such and as the appointment of the corporate body as trustee in their place.

Power of Moderator to execute documents of transfer in favour of corporate body in place of trustee under disability, etc.

9. (1) Where, without proper cause, a trustee referred to in subsection (3) or subsection (4) of section 8 of this Act—

(a) is prevented from assigning, conveying or transferring or from joining in assigning, conveying or transferring or from executing or joining in the execution of a deed of assignment or conveyance or memorandum of transfer assigning, conveying or transferring any estate or interest in property referred to in that subsection to the corporate body;

or

(b) neglects or refuses to assign, convey or transfer or join in assigning, conveying or transferring or to execute or join in the execution of a deed of assignment or conveyance or memorandum of transfer assigning, conveying or transferring any estate or interest in property referred to in that subsection to the corporate body,

the Moderator may, by notice under his hand published on the same day in the *Gazette* and in a newspaper circulating generally in the State or in the place where the property is situate, give public notice that he intends to assign, convey or transfer or join in assigning, conveying or transferring or to execute or join in the execution of a deed of assignment or conveyance or memorandum of transfer assigning, conveying or transferring such estate or interest in that property to the corporate body in place of that trustee.

(2) If, within thirty days after the day on which the notice is published in the *Gazette*, no legal proceedings, notice of which has been given in writing to the Moderator, are commenced by or on behalf of the trustee to restrain the Moderator from carrying out his intention or, where such legal proceedings have been commenced and such notice has been given to the Moderator within such time, the final decision by a court thereon does not preclude the Moderator from carrying out his intention, the Moderator may, as the case

may require, assign, convey or transfer or join in assigning, conveying or transferring or execute or join in the execution of a deed of assignment or conveyance or memorandum of transfer assigning, conveying or transferring the estate or interest in that property to the corporate body and such assignment, conveyance or transfer or the execution of such deed or memorandum by the Moderator shall be deemed to be a proper and effectual assignment, conveyance, transfer or execution, as the case may be, by that trustee.

10. If—

- (a) the trustee or all the trustees by whom any property is held in trust for or on behalf of the Church or any congregation of the Church or any congregation of Presbyterians which has ceased to exist or for any special purpose in connection therewith or for the benefit or use of the members thereof as such or of any person or persons for the time being holding office therein, should die or be absent from South Australia for an unbroken period of six months, or cannot be found, or resign or be removed from office, or become otherwise incapable of holding such property, of which incapacity the General Assembly shall be the sole and final judge;

and

- (b) the persons who are lawfully authorized or empowered to elect or appoint a successor or successors to such trustee or trustees refuse or neglect to do so for a period of thirty days after being required in writing by the Moderator to make such election or appointment or there is no person lawfully authorized or empowered to elect or appoint such successor or successors,

the Moderator may, by certificate in writing under his hand in the form and to the effect of Part I of the first schedule to this Act, certify that there are no trustees of that property and thereupon the Moderator may assign, convey or transfer or execute a deed of assignment or conveyance or memorandum of transfer of the estate or interest of the trustee or trustees in that property to the corporate body and such assignment, conveyance, transfer, deed or memorandum shall have effect as if the assignment, conveyance, transfer or execution, as the case may be, had been duly made by the lawfully appointed trustee or trustees of that property.

- 11.** After the incorporation of the corporate body, every donation, gift and disposition of property, real or personal, lawfully made before such incorporation, but not having actually taken effect, or lawfully made thereafter, by deed, will or otherwise to or in favour of or in trust for the Church generally or the incorporated General Assembly or to or in favour of any person for or on behalf of the Church

Power of Moderator to transfer to corporate body property where there are no trustees.

Certain gifts to Church before and after incorporation of corporate body to have effect as gifts to corporate body.

generally shall have and take effect as if the same had been made to or in favour of the corporate body, subject to the trusts, if any, to which the donation, gift or disposition was or is subject and, in any appropriate case, subject to The Real Property Act, 1886, as amended, upon application in writing by the corporate body to the Registrar-General and the furnishing of such information as he may require, the Registrar-General may make such notations and entries in his Register Book as he thinks necessary or expedient for the purpose of evidencing the estate or interest of the corporate body in any real property in consequence of the provisions of this section.

Management of property vested in or required by corporate body.

12. (1) Any property becoming vested in or acquired by the corporate body shall, so far as the same is subject or made subject to any express trust, be held, managed and dealt with by the corporate body in conformity with such express trust and, so far as the same is not subject or made subject to any express trust, be held, managed and dealt with by the corporate body in such manner as the General Assembly may, from time to time, direct.

(2) Subject to subsection (1) of this section, the corporate body shall have power to borrow money for the purposes of the Church on the security of property vested in or acquired by it, where such property is subject or made subject to any express trust, and such property shall be subject, as to the management thereof, to the rules and regulations of the General Assembly in force for the time being which are applicable thereto.

Corporate body to convey land to congregational trustees for purpose of mortgaging.

13. (1) Where any land is held by the corporate body in trust for any congregation of the Church, the corporate body shall, upon being notified in writing by the General Assembly that it has passed a resolution requiring it to do so, convey or transfer the land to such trustees (in this section referred to as "the congregational trustees") as shall be nominated by the congregation and appointed by the presbytery to which the congregation belongs in accordance with the rules and regulations of the General Assembly.

(2) The land, when so conveyed or transferred, shall be held by the congregational trustees only for the purpose of mortgaging, charging or encumbering the same and they shall have power to, and shall, execute or effect the mortgage, charge or encumbrance, but upon payment of the moneys, or upon the other discharge of the obligations, secured by such mortgage, charge or encumbrance, the congregational trustees shall have power to, and shall, convey or transfer the land back to the corporate body.

(3) Where, upon payment of the moneys, or upon the discharge of the obligations, secured by a mortgage, charge or encumbrance in respect of land referred to in subsection (2) of this section, the congregational trustees or any of them should fail or refuse to convey

or transfer or to join in conveying or transferring the land back to the corporate body, the Moderator may, in place of such trustees or trustee, convey or transfer or join in conveying or transferring, or execute or join in the execution of a deed or memorandum conveying or transferring the land back to the corporate body and such conveyance or transfer or the execution of such deed or memorandum by the Moderator shall be deemed to be a proper and effectual conveyance, transfer or execution, as the case may be, by those trustees or that trustee.

14. (1) No conveyance or transfer, not being a conveyance or transfer of land back to the corporate body pursuant to subsection (2) of section 13 of this Act, and no mortgage, exchange or lease of any land held by trustees or the corporate body in trust for or on behalf of the Church or any congregation thereof shall be made and no instrument shall be executed for such purpose except with the consent in writing of the Moderator, nor except in pursuance of and in conformity with the trusts upon which the same is held, and no such conveyance, transfer, mortgage, exchange or lease shall have force or effect without such consent.

Transfers, etc.,
of land held on
behalf of
Church, etc.

(2) Subsection (1) of this section shall not apply to a mortgage or lease of any land which the trustees thereof, by virtue of the enactment or instrument under which the same was held, had, immediately before the incorporation of the corporate body, power to mortgage or lease without such consent, but, in any such case the trustees shall give notice in writing to the Moderator of their intention to execute the instrument mortgaging or leasing the land prior to the execution thereof.

(3) Subject to this Act, an instrument of transfer, mortgage, exchange or lease of any land under the provisions of The Real Property Act, 1886, as amended, which is held by trustees for or on behalf of the Church or any congregation thereof, shall be as valid and effectual if executed by a majority of the trustees for the time being of that land as appear in the Presbyterian Register of Trustees kept by the Moderator under section 15 of this Act as if the instrument had been duly executed by all the trustees of that land; and where such land is not under the provisions of that Act, any instrument of conveyance, mortgage, exchange or lease thereof shall be as valid and effectual if executed by a majority of the trustees for the time being of that land as appear in that register as if all the trustees in whom the legal estate in the land is vested had joined in and executed that instrument.

(4) A trustee absent from South Australia may enter into any contract for the sale, mortgage, exchange or lease of any land referred to in this section and may execute or join in the execution of any such instrument of conveyance, transfer, mortgage, exchange or lease by his attorney duly appointed by him in that behalf.

The
Presbyterian
Register of
Trustees.

15. (1) The Moderator shall keep or cause to be kept a register of trustees of all property held by trustees for or on behalf of the Church or any congregation thereof, other than property held by or vested in the corporate body.

(2) The register shall be called and inscribed as "The Presbyterian Register of Trustees", and shall be in the form and to the effect of the second schedule to this Act.

(3) The Moderator shall, with all reasonable dispatch, enter or cause to be entered in the register the names and addresses of the existing trustees of each such property and all other appropriate particulars as indicated in the second schedule to this Act and shall, from time to time, as occasion requires, maintain and keep the register up to date and, upon the due appointment of any new trustee of that property, insert or cause to be inserted in the register the name and address of such new trustee and shall insert or cause to be inserted such other appropriate particulars as are indicated in that schedule.

(4) The Moderator shall sign his name in the register in the proper column and in the line in which the name of each trustee appears, whether the trustee be an existing or a new trustee and such signature shall authenticate the due appointment of that trustee.

(5) The Moderator may, at any time and as occasion requires, issue a certificate in the form or to the effect of Part II of the first schedule to this Act which shall be signed by him and shall state the name or names and the address or addresses as shown in the register of the trustee or trustees of any property specified in the certificate as on the date of the certificate or on any particular date specified in the certificate.

(6) For all purposes and in any legal proceedings—

(a) a certificate referred to in subsection (5) of this section purporting to be signed by the Moderator, when produced, shall be received in evidence and shall be *prima facie* evidence of the matters certified therein;

and

(b) the register, when produced, shall be received in evidence and the entries therein made pursuant to this section, and purporting to be authenticated by the signature of the Moderator, shall be *prima facie* evidence of the matters stated therein.

(7) The Moderator shall cause the register at all reasonable times to be open to the inspection of any person.

16. The Moderator may at any time amend the register by rectifying any error or supplying any omission therein, and shall attest each such amendment by writing opposite the amendment his initials in the margin of the page on which the amendment is made and the date on which his initials are so written, but shall not erase or render illegible or permit to be erased or rendered illegible the part of the register so amended; and the register, as so amended, shall for all purposes, be deemed to be the register kept, or required to be kept, under this Act.

Amendment of register.

17. (1) Upon the entry and authentication in the register of the name or names of any new trustee or trustees of any land that is not under the provisions of The Real Property Act, 1886, as amended, such land shall vest in the new trustee or trustees solely or, as the case may be, jointly with the continuing trustee or trustees, if any, for all the estate or interest of the former trustee or trustees therein, and upon and subject to the same trust, without any conveyance or assignment whatsoever.

Legal estate to pass to new trustees without conveyance.

(2) Upon the entry and authentication in the register of the name or names of any new trustee or trustees of any land that is under the provisions of The Real Property Act, 1886, as amended, and, upon application in writing by the Moderator to the Registrar-General together with such further information as the Registrar-General may require, the new trustee or trustees shall be entitled to be registered in the Register Book kept at the Lands Titles Registration Office solely or, as the case may be, jointly with the continuing trustee or trustees, if any, as the proprietor or proprietors of the estate or interest of the former trustee or trustees in such land, and upon and subject to the same trust, without any formal transfer.

18. (1) The General Assembly may, subject to and in accordance with the rules, practices and usages for the time being recognized by the Church, from time to time make rules or regulations—

Rules.

- (a) providing for the appointment, vacation of office and removal of the chairman and other members of the corporate body and the filling of vacancies in the office of the chairman or any other member of the corporate body;
- (b) providing for the custody of the seal of the corporate body and the affixing thereof to any document and for verifying the affixing thereof;
- (c) providing for the appointment, vacation of office or removal of the trustee, or the trustees or any of the trustees of any property not vested in the corporate body or not

held under any Act or deed containing a specific provision for such appointment, vacation of office or removal, and for the filling of any vacancy occurring in the office of any such trustee;

and

(d) making such other provisions as are necessary or expedient to give effect to the provisions of this Act,

and may, subject as aforesaid, from time to time by rule or regulation, as the case may be, amend or vary the same.

(2) The Moderator shall, upon the making of every rule or regulation under this Act, cause the same to be published in the *Gazette* and cause a copy thereof, certified by him as correct and containing the date of publication thereof in the *Gazette*, to be lodged with the Registrar of Companies.

(3) The production of a copy of such rule or regulation so certified, and containing the date of publication thereof in the *Gazette*, shall, in all legal proceedings and for all purposes, be *prima facie* evidence of the text of the rule or regulation and of the same having been duly made.

(4) A copy of the rules and a copy of the regulations made by the General Assembly together with all amendments thereto shall be kept at the office of the Moderator who shall cause the same to be made available for inspection by any person requiring such inspection at any reasonable time or times.

(5) Section 38 of the Acts Interpretation Act, 1915, as amended, shall not apply to or in relation to any rule or regulation made under this Act.

Act not to
apply to
certain
institutions.

19. Nothing in sections 1 to 18 (both inclusive) of this Act shall affect—

(a) the body corporate constituted by the name of Scotch College, Adelaide, by the Private Act known as Scotch College, Adelaide, Incorporation Act, 1922, or any provision of its constitution or of that Act;

(b) the body corporate incorporated under the Associations Incorporation Act, 1956, as amended, and known as Presbyterian Girls' College Incorporated, or any provision of its constitution;

or

(c) the body corporate incorporated under the Associations Incorporation Act, 1956, as amended, and known as St. Andrew's Presbyterian Hospital Incorporated, or any provision of its constitution,

or any property held by or on behalf of or in trust for such body corporate.

20. (1) If—

- (a) the Moderator for the time being of the General Assembly of the Presbyterian Church of Australia and the respective Moderators for the time being of the General Assemblies of the Presbyterian Church of South Australia, the Presbyterian Church of Australia in the State of New South Wales, the Presbyterian Church of Victoria, the Presbyterian Church of Queensland, the Presbyterian Church in Western Australia and the Presbyterian Church of Tasmania have signed a deed declaring that those Churches have agreed to implement and give effect to provisions in essence the same as the provisions of the third schedule to this Act;
- (b) legislation enabling effect to be given to the third schedule to this Act substantially in the manner herein provided has been enacted by the Parliament of each of the States of New South Wales, Victoria, Queensland, Western Australia and Tasmania;

Certain interests in property to be held subject to third schedule.

and

- (c) a notice, signed by the Moderator for the time being of the General Assembly of the Presbyterian Church of South Australia, to the effect that those Churches have agreed to implement provisions in essence the same as the provisions of that schedule and that such legislation has been enacted, has been published in the *Gazette* (which notice shall be sufficient evidence that the events mentioned in paragraphs (a) and (b) of this subsection have occurred),

all interests in property held immediately before the publication of that notice by or in trust for some or all the purposes of the Presbyterian Church of South Australia or the General Assembly thereof or any presbytery, session, board of management, congregation (whether separately incorporated or not), department, committee or council or board howsoever constituted or fund in connection with the Presbyterian Church of South Australia (including The Presbyterian Church Development Fund Incorporated and The Presbyterian Church Development Fund (No. 2) Incorporated) shall be held for the same purposes and upon the same trusts, but subject in all respects to the provisions of the third schedule to this Act.

(2) For the purposes of this section and the third schedule to this Act—

- (a) the General Assembly of the Presbyterian Church of Australia (or, the General Assembly of Australia) is

that Assembly constituted under the scheme of union agreed upon on the twenty-fourth day of July, 1901, as amended from time to time thereafter;

(b) a reference to the scheme of union in the third schedule to this Act shall (unless the context otherwise requires) be read and construed as a reference to that scheme of union referred to in paragraph (a) of this subsection, as amended from time to time thereafter.

(3) If, upon a union being entered into under and in accordance with the third schedule to this Act, there should in this State be a continuing congregation as defined in that schedule but a continuing Presbyterian Church within this State should be unable to function in this State, the General Assembly of the continuing Presbyterian Church of Australia may so far as necessary place any such congregation under the jurisdiction of the Church Courts in subordination to such Assembly for so long as that inability persists.

(4) Upon the signing by the Moderators of the deed referred to in paragraph (a) of subsection (1) of this section, the provisions of the third schedule to this Act shall, for the purpose of enabling full effect to be given thereto and to the agreement contained in that deed, have effect as if expressly enacted by this Act.

Judicial notice to be taken of signature of Moderator.

21. Every court and every person acting judicially shall take judicial notice of the signature of the Moderator for the time being of the General Assembly of the Presbyterian Church of South Australia and when the signature appears on any document or paper shall presume that it was properly affixed thereto.

Section 20 to apply to certain interests in property.

22. Where, by any gift, devise, bequest or declaration of trust, whether contained in any will or other instrument, coming into operation after the publication in the *Gazette* of a notice referred to in paragraph (c) of subsection (1) of section 20 of this Act (irrespective of whether such will or instrument was made or executed before or after the publication of the notice), any interest in property is given in such manner or upon such trusts that, if it had been so given, devised, bequeathed or held immediately before the publication of the notice, section 20 of this Act would have had application to such interest in property, then that interest in property shall be deemed to be an interest in property to which section 20 applies and shall be held in trust accordingly.

Special provisions relating to gifts over in certain cases.

23. (1) Where, by any gift, devise, bequest or declaration of trust for a charitable or benevolent purpose, whether contained in any will or other instrument or made orally, or otherwise howsoever created, there is provision for a gift over in the event of the Presbyterian Church of South Australia or the General Assembly thereof

or any presbytery, session, board of management, congregation, department, committee, council or board howsoever constituted or fund in connection with the Presbyterian Church of South Australia (whether separately incorporated or not) ceasing to exist for any reason whatsoever or of the Presbyterian Church of South Australia or the General Assembly thereof proceeding to take a vote on the question whether or not to unite with any church of a denomination other than Presbyterian, or resolving to enter into union with any church of a denomination other than Presbyterian, the following provisions shall apply:—

- (a) Subject to subsection (2) of this section, the operation of any such provision for a gift over shall be suspended and any such provision shall have no force or effect while there shall be in existence the body or bodies in whom any real, personal or leasehold property shall vest in accordance with paragraph (b) or (c) of this section:
- (b) The commission referred to in the third schedule to this Act, with the approval of the Supreme Court or a judge, shall by notice published in the *Gazette* determine whether the Presbyterian Church of South Australia or its General Assembly or any court, committee, board or council thereof or the church resulting from any union as is in this Act provided for, or any one or more of them, shall have the benefit of the whole or any part or parts of any real, personal or leasehold property, the subject of any such gift, devise, bequest or declaration of trust:
- (c) Upon the publication in the *Gazette* of the determination of the commission as required by paragraph (b) of this subsection, the real, personal or leasehold property, the subject of the gift, devise, bequest or declaration of trust to which it refers shall vest in such body or bodies as the commission determines and shall be held by it or them upon all the original trusts, terms and conditions attaching thereto:
- (d) In the event of any such body or bodies referred to in paragraph (c) of this subsection ceasing to exist for any reason whatsoever, any such gift over which has been suspended or otherwise affected by the operation of paragraph (a) of this subsection shall cease to be suspended and shall have full force and effect upon the occasion when that body or those bodies shall cease to exist:
- (e) In the event of any gift over or any trust failing, or lapsing, or an intestacy being created by reason of the occurrence of any of the events mentioned in this subsection, the

Supreme Court of South Australia shall have jurisdiction to, and may, direct or approve a *cypres* scheme in relation to any real, personal or leasehold property comprised therein.

(2) If any person, not being a charity or a benevolent body and not being directed to hold any real, personal or leasehold property mentioned in subsection (1) of this section by the terms of any gift, devise, bequest or declaration of trust for a charitable or benevolent purpose, shall be or become by the terms of the will or other instrument a substituted beneficiary or donee by reason of the provisions of any gift over in the circumstances mentioned in that subsection, that person shall not be deprived of any right or entitlement by reason of this section.

(3) Nothing in subsection (1) or (2) of this section shall apply to any provision for a gift over where it is expressly stated in the relevant instrument that any union of churches resulting from the implementation of the provisions of the third schedule to this Act shall be excluded from any benefit under any gift, devise, bequest or declaration of trust hereinbefore mentioned.

Provision for
successor to
the incor-
porated General
Assembly.

24. (1) Where the incorporated General Assembly is a trustee pursuant to the powers in that behalf granted by section 21 of the Associations Incorporation Act, 1956, as amended, and in the event that the incorporated General Assembly shall cease to exist as a result of the implementation of the provisions of the third schedule to this Act, the Moderator at the time when the incorporated General Assembly shall cease to exist shall, by writing under his hand, appoint a new trustee or trustees in substitution for the incorporated General Assembly and such trustee or trustees shall hold any real, personal and leasehold property, the subject of such trust, upon the same trusts as the incorporated General Assembly held the same at the time of ceasing to exist.

(2) Notice of such appointment by that Moderator shall be published in the *Gazette* once and upon the publication thereof the appointment shall have full force and effect.

FIRST SCHEDULE

Certificates as to Trustees of Church Property

PART I

I hereby certify that there are no Trustees of (here specify particular Church property).

Dated this day of 19 .

Moderator

PART II

I hereby certify that (here insert names and addresses of the Trustees for the time being or for the time specified (as the case may be) as shown by the Register of Trustees) are (or were on the day of 19) the Trustees of (here specify the particular Church property).

Dated this day of 19 .

Moderator

SECOND SCHEDULE

"The Presbyterian Register of Trustees"

Folio (1 words of description, such as Scots Church, North Terrace, Adelaide) comprised in conveyance registered the day of 19 .

No. of Memorial (insert) Book (insert).

If under Real Property Act, 1886-1962 (insert "comprised in Certificate of Title Register Book Vol. (insert) Folio (insert).

Number of Trustees (state number).

Name of Trustee	Address of Trustee	Date of Appointment of New Trustee	Date of insertion of Name of New Trustee Herein	How Vacancy Occurred in Trust such as Death or the like	Date of Ceasing to be a Trustee and Cause	Signature of Moderator
A.B.	17 Currie Street Adelaide Solicitor					
C.D.	Similar					
E.F.	"					
G.H.	"					
I.J.	"					
K.L.	"					
M.N.	"					
O.P.	"	1 Jan. 1958	1 Feb. 1958	By death of A.B. a former trustee		

THIRD SCHEDULE

1. The General Assembly of Australia shall have the right and power to negotiate with other branches of the Christian Church with a view to the Presbyterian Church of Australia entering into union with any of them, and the Presbyterian Church of Australia may pursuant to a resolution of the General Assembly of Australia enter into such union provided that the proposed basis of union with any such church or churches (which shall include a section setting out basic principles of constitutional structure and practice) shall first be remitted to State Assemblies and presbyteries under the Barrier Act procedure and may be approved by the General Assembly of Australia only when approved by a majority of the State Assemblies, and at least three-fifths of the number of presbyteries of the whole church and three-fifths of the number of members present when the final vote of the General Assembly of Australia is taken.

2. Before the final vote is taken in the General Assembly of Australia communicants aged sixteen years and over whose names are on the roll of a congregation shall be given an opportunity to answer the following questions:—

(a) Do you desire this congregation to become a congregation of the church which may result from the proposed union?

(b) Should the required majority for union be obtained in presbyteries, State Assemblies and the General Assembly of Australia do you desire to remain in membership of any Presbyterian Church of Australia continuing to function on the present basis?

3. (1) For the purpose of enabling communicants to vote upon the questions prescribed in the last preceding clause the General Assembly of Australia shall prescribe a date by which all sessions shall be required to have purged their communion rolls and to have submitted to the presbytery of the bounds a voting register in duplicate consisting of all eligible names on the communion roll at the date of submission to the presbytery.

(2) Both copies of the said voting register shall be certified by the moderator and clerk of the session as being the voting register.

(3) The presbytery of the bounds shall at the earliest opportunity following the submission to it of the voting register attest both copies and shall return one copy to the session from which it was received and shall retain the other copy.

(4) Only those persons whose names are on an attested voting register may take part in the vote.

(5) Sessions shall make available voting papers containing the said questions at least fourteen days before a date to be prescribed by the session for the close of voting, upon which the voters shall indicate whether their answer is "Yes" or "No" to each of the questions.

(6) Voting papers must be enclosed in a sealed envelope unsigned, and this envelope with the voting paper therein must be enclosed within another sealed envelope which shall be signed on the inside of the flap of that envelope by the voter and returned prior to the close of voting.

(7) The session shall count votes and transmit the number of "Yes" votes and the number of "No" votes cast with respect to each question to the clerk of the presbytery of the bounds for transmission to the clerk of the General Assembly of Australia through the clerk of the State Assembly.

(8) The clerk of the General Assembly of Australia shall advise the commission to be appointed as hereinafter provided of the results.

4. (1) Upon the General Assembly of Australia resolving to enter a union pursuant to clause 1 of this schedule, it shall provide just and equitable safeguards of the rights of minorities who do not concur in the decision to unite, which safeguards shall include the following provisions:—

(a) The General Assembly of Australia shall set up a commission consisting of two groups of equal numbers, one representing those approving and one disapproving such union, together with three independent persons acceptable to both groups one of whom shall be chairman:

(b) In any case where at least one-third of the number of communicants of a congregation who participate in the vote in accordance with the last preceding clause (hereinafter called "a continuing congregation"), shall prior to the date of the final vote of the General Assembly of Australia approving such union have recorded votes indicating their desire to continue in membership of the Presbyterian Church of Australia, such communicants shall not become a congregation of the church to result from the union but shall be recognized as a congregation of the Presbyterian Church of Australia continuing to function under the Scheme of Union and shall be entitled to retain the congregational property, unless the commission appointed pursuant to this section shall for special reasons otherwise determine, in which case the said commission is required to ensure that what it deems to be adequate and suitable congregational property is provided including a due and proper share of any congregational endowments:

(c) Where in any district or locality less than one-third of the number of communicants who participate in the said vote and whose names appear on the roll of a congregation purged as aforesaid, shall prior to the date of the final vote of the General Assembly of Australia approving such union have recorded votes indicating their intention to remain in membership of any Presbyterian Church of Australia continuing to function on this basis, and—

(i) the presbytery of the bounds is of opinion that such minorities of such congregations are not able to be related in membership with some continuing congregation or congregations as a charge or charges;

and

(ii) the said commission is satisfied as to the capacity of the said minorities to continue as such,

the commission shall have power to arrange in a suitable locality or localities for such groupings of communicants to be provided with a church, manse and other necessary buildings to be used for congregational purposes, or with sufficient funds to provide such buildings:

(d) The said commission, upon its being satisfied that the continuing congregations are capable of functioning as a continuing Presbyterian Church of Australia under the Scheme of Union, shall, in addition to the powers, functions and discretions otherwise conferred upon it in this clause, have the power to determine what specific items, if any, of the general property of or held in trust for the purposes of the Presbyterian Church of Australia and the several State Presbyterian Churches or the Assemblies thereof shall for the efficient functioning of the said continuing church be retained by or for the purposes of the said church, and what compensation if any for the loss of a just and equitable share of such property should be payable to the said church, which shall have the right to use the name "Presbyterian Church of Australia":

(e) The said commission in making its determinations as aforesaid shall have regard to the just and equitable rights of minorities and shall, *inter alia*, provide for the following requirements of a continuing church, including a due and proper share of endowments existing at the date of union and shall include provision for and maintenance for:—

(i) a centre for the theological training of the ministry of the said continuing church, including a centre of residence and staffing having regard to the aim of the Presbyterian Church of Australia to have theological halls equipped with not fewer than three professors;

(ii) a centre for the administration of the said continuing church, including provision for a clerk, treasurer and such other staff and buildings deemed necessary by the said commission for continuing the activities of the said church, and also a centre for administration with provision for adequate staff for its requirements in any State where the strength of the said continuing church is deemed by the commission to warrant it;

(iii) at least one school for girls and one school for boys in each State where at the date of the said union there is more than one Presbyterian school for girls and more than one Presbyterian school for boys, and in any State where there is only one Presbyterian school for girls and/or only one Presbyterian school for boys the commission shall determine whether ownership of any such school shall be vested in the said continuing church or in the church to result from the said union, or make other adequate provision if the strength of the said continuing church warrants it.

(2) A decision or determination of the commission set up pursuant to subclause (1) of this clause shall have no effect unless it has been approved by the Supreme Court or a judge and jurisdiction is hereby conferred on that Court and each judge to hear and determine any application for such approval.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. M. NAPIER, Lieutenant-Governor