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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

Legislative Council.

1935.

A BILL

To provide for the regulation, management and control of the temporal affairs of the Presbyterian Church of Australia in the State of New South Wales, and to amend and consolidate the Presbyterian Church Property Consolidation Act of 1904.

WHEREAS the temporal affairs of the Presbyterian Church of Australia in the State of New South Wales are regulated by the "Presbyterian Church Property Consolidation Act of 1904" AND WHEREAS such Act has been found not sufficiently wide to cover the present activities of the Church AND WHEREAS it is expedient in relation to the said Church to define clearly the rights of Ministers to the proportion of rents of glebe lands which they are to receive in augmentation of their stipends also to make provision for claims in respect

Preamble.

respect of resumptions differentiating between properties belonging to congregations and those held by the corporate trustees for general Church purposes also to alter the personalities of the persons eligible to act as trustees so as to permit business knowledge and attainments to be secured in a greater ratio than are under the present rules of appointment procurable also to increase the number of trustees to enable a quorum to be readily assured in cases of urgent as well as ordinary business and also to empower the General Assembly to appoint Boards and Directors and Committees to carry on schools and various activities of the Church and to grant constitutions for all such and to alter and amend all or any of such constitutions also to make such provisions as may be requisite to enable the General Assembly to determine what trusts and gifts owing to rearrangement of any of the Church's activities and services may be found to be unnecessary of continuance ineffective or impossibility of further usefulness and to provide for the user of any property theretofore held for any of such purposes in other and as far as possible similar Church work whether religious educational or charitable the discretion of the General Assembly to be exercised after consultation with each particular interested Presbytery within the bounds also to make clear provision for the receipts of the corporate trustees operating as complete discharges for any legacies and gifts to the Church generally and any service activity or purpose of the Church or any particular congregation also to provide for the complete sufficiency of the certificate of the Clerk of the Assembly as to all necessary consents having been given and formalities observed in relation to all dealings with property of the Church whether congregational or general also to make provision for the election of trustees to fill vacancies in the trusteeship and generally to remove anomalies questions and difficulties in administration relating to property according to the rules enunciated in the Church code which have in practice been found to exist or arise under the present state of the law AND WHEREAS it is expedient to repeal the said Act and to provide for the matters hereinbefore referred to.

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1. This Act may be cited as "The Presbyterian Church (New South Wales) Property Trust Act, 1935."

2. (1) The Presbyterian Church Property Consolidation Act of 1904 is hereby repealed.

(2) All regulations made under such repealed Act and in force at the commencement of this Act shall to the extent to which they are not inconsistent with this Act continue in force until altered or replaced by regulation under this Act.

(3) The repeal enacted by this section shall not unless a contrary intention in this Act appears affect—

(a) any right accrued or obligation incurred before the commencement of this Act under the enactment so repealed;

(b) any action or proceeding pending or incompleated at the commencement of this Act.

(4) Every such action or proceeding may be carried on and completed as if such repeal had not been enacted.

3. In this Act unless the context or subject matter otherwise indicates or requires the words—

"Trustee" or "Trust" means The Presbyterian Church (New South Wales) Property Trust.

"The General Assembly" shall mean the General Assembly for the time being of the Presbyterian Church of Australia in the State of New South Wales.

4. The Trustees shall be a body corporate by the name of The Presbyterian Church (New South Wales) Property Trust and shall have perpetual succession and a common seal and shall be capable of acquiring holding managing and controlling and subject to this Act granting mortgaging demising selling exchanging dedicating disposing of and otherwise dealing with any property real and personal and of suing and being sued by the aforesaid name and doing and suffering all such other acts and things as bodies corporate may by law do or suffer.

5. The Trustees shall consist of twelve persons of whom six shall be Ministers and six Communicants or Adherents of the Presbyterian Church of Australia in the

the State of New South Wales. The Trustees shall be elected by the General Assembly from time to time for a period of three years with the exception that following upon the first election four of the trust being two ministers and two laymen shall retire at the end of the first year and four others ministers and laymen similarly at the end of the second year retiring members being in each case eligible for re-election. The order of such retirements shall be determined by the General Assembly. Any casual vacancy occurring at any time or times in the trust shall be filled by the appointment of another person of similar qualifications but so that the said ratio is not disturbed. Every such appointment is to be made by the continuing Trustees for the time being and is to be effective and operative till the next meeting of the General Assembly. A certificate signed by the clerk for the time being of the General Assembly of any and every such appointment shall be for all purposes conclusive evidence that such appointees respectively possessed the qualifications required and that they were duly appointed. Trustees being ministers or elders shall be ex-officio members of the General Assembly.

6. The first election of Trustees under this Act shall be made at the first meeting of the General Assembly after the passing of this Act and until such Trustees are so elected the Trustees of the Presbyterian Church of Australia in the State of New South Wales appointed under and pursuant to the Presbyterian Church Property Consolidation Act of 1904 shall continue to function with full power and authority as if such repeal of the said The Presbyterian Church Property Consolidation Act of 1904 had not been enacted.

7. The Trustees shall have the custody of the common seal of the said corporate body and the form of such seal and all other matters relating to the use of the same and generally with regard to the meetings and proceedings of the Trustees shall from time to time be determined by the said corporate body and four members for the time being of the said corporate body shall constitute a quorum.

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8. Any deed or instrument executed or signed by and any other act matter or thing done by any four members of the corporate body aforesaid and in pursuance of a resolution of the said corporate body and under the common seal of the said corporate body shall be as effectual as if the same had been executed signed or done by all the members of the said corporate body.

9. All lands tenements and hereditaments (including chattels real) situated or being in the State of New South Wales and any other part or parts of the Commonwealth of Australia or in the New Hebrides and India, together with all rights easements and appurtenances relating thereto or belonging and all personal property which were at the date of the election of the Trustees vested in the Trustees of the Presbyterian Church of Australia in the State of New South Wales and all such of the same as may then or at any time or times thereafter belong whether in possession reversion remainder or expectancy to or be held by any person firm or company in trust for the Presbyterian Church of Australia in the State of New South Wales generally or for any congregation thereof or any activity fund service institution or interest of the said church or in any way connected therewith shall without any conveyance or transfer vest in the Trustees on and from the date of their election and all such together with such other property as may be acquired by the Trustees or which may become vested in them under this Act shall be held by them subject to any express trust affecting the same respectively to be dealt with upon the trusts and with the powers, authorities and discretions and subject to the terms and conditions and provisions of this Act and subject to no other trusts or provisions whatsoever: Provided that if any such property is subject to any charge or mortgage it shall not vest in the Trustees without the consent of the chargee or mortgagee until such charge or mortgage has been discharged or until the Trustees with the consent of the chargee or mortgagee have undertaken to answer for the liabilities imposed in respect of such charge or mortgage.

10. Whereupon a reference from the Church Property Law and Documents Committee after a report from the
Presbytery

Presbytery of the bounds the General Assembly has declared that any property real or personal belonging to or held upon trust for any congregation or any activity fund service institution or interest of the said church or in any way connected therewith is no longer required for the purposes or uses of the said congregation activity fund service institution or interest on account of the said congregation having ceased to function as a congregation of the said church or such activity fund service institution or interest of the said church having ceased to be carried on such property shall thereupon without any conveyance or transfer become vested in the Trustees freed and discharged from all trusts affecting the same and the said property together with all accretions to the same shall be dealt with from time to time by the Trustees as the General Assembly having due regard to the original purpose or purposes of the trust previously affecting the said property shall in its uncontrolled discretion direct. The production of a minute or certificate of the clerk of the General Assembly for the time being shall be conclusive evidence that the said declaration has been duly made by the General Assembly.

11. All the provisions now in force with respect to the appointment resignation removal powers rights duties and responsibilities of Congregational Trustees shall continue in force with respect to such Trustees until the property vested in them is in accordance with the provisions of this Act vested in the Trustees hereby constituted.

12. The General Assembly may make regulations for the purchase or acquisition of freehold or leasehold property as an investment for the funds of the church or for any particular use activity service or object or for the purposes of the church generally and in respect of the dealing with management and control of all or any property vested in the Trustees and in the case of all property held on behalf of congregations of the Presbyterian Church of Australia in the State of New South Wales or by Congregational Trustees until the same shall be vested in the Trustees under this Act such Assembly may make regulations for the management leasing mortgaging selling disposing of and exchanging thereof and with regard to
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all matters relating to resumptions of the same respectively by any competent authority: Provided that no regulation shall in the case of congregational property be passed to allow any such property to be nor shall the same in any case be leased, mortgaged, sold or exchanged or resumption claims in respect thereof made and completed without the consent of the congregations interested therein such consent to be operative and evidenced by a unanimous or majority vote as the case may be of the members of such respective congregations who are present at a meeting of the same congregations duly called for the purpose of considering and deciding on the questions affecting the particular matter to be then submitted to them.

13. The General Assembly may from time to time appoint and grant constitutions and powers of management and control to any councils committees boards or directors who are appointed by it for the working and carrying on of any of the activities or projects of the church generally and may at its pleasure at any time or times cancel revoke alter or amend the same respectively: Provided that all such as may be operating under appointments made and constitutions created before the passing of this Act shall continue to function thereunder until otherwise determined by the General Assembly.

14. Subject to the terms and provisions of this Act all property held by the Trustees shall so far as the same is not subject to any express trust be held and dealt with by them in such manner as they may in their discretion think best: Provided always that the General Assembly may from time to time give such directions or instructions to the Trustees with regard to any matter affecting any property held by them for the church generally or for any fund institution activity or service thereof as it may deem expedient and all such directions and instructions shall be followed and obeyed by the Trustees. Subject as before enacted the Trustees may grant leases of any lands and premises held by them for such terms of years at such rents and subject to such terms and conditions as they may deem expedient.

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15. The Trustees shall subject to the rights of congregations under the provisions of clause 12 hereof have full discretionary power to act in relation to all cases of exchange dedication and resumption of all property vested in them under this Act and shall make claims for compensation and otherwise in respect of same and agree to and settle such claims for such considerations and on and subject to such terms and conditions as may appear advisable to them.

16. The Trustees shall out of the net rents and profits received by them from any glebe and other lands belonging to any congregation after payment thereof of all rates taxes and impositions insurance premiums and cost of repairs thereto and improvement and maintenance thereof and interest on any loans made on the security of such lands in the first place pay to the minister for the time being of the said congregation during each year a sum of at the rate of not exceeding one hundred and fifty pounds per annum (exclusive of stipend from other sources) and in the next place with the consent of the General Assembly shall apply the remainder of the said rents and profits towards the building improving enlarging or maintaining of the church or minister's dwelling-house belonging to such congregation or to such social religious education charitable or other purpose connected with the Presbyterian Church in New South Wales as the General Assembly may determine. The minister in the event of his having received in any one or more years less than the said sum of £150 per annum shall have no claim in respect of such deficiency upon the net income of any past or future year or years his rights in respect of his said allowance being limited to the income available for that purpose of each particular current year only in which it was payable.

17. The minister lawfully appointed shall have free access and admission to the church of which he is the officiating minister and the burial-ground belonging thereto and every part thereof respectively at all times as he shall think fit and shall freely exercise his spiritual functions therein respectively without interruption or disturbance by any persons and shall while he shall continue

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to be such minister as aforesaid freely use possess and enjoy the minister's dwelling-house and the appurtenances thereto and shall subject to the provisions of this Act be entitled to receive for his own use and benefit out of the net rents issues and profits of any glebe or other lands belonging to his congregation yearly a sum of at the rate of not exceeding one hundred and fifty pounds a year exclusive of stipend from other sources: Provided that no such liberty of access admission or possession as aforesaid for any length of time shall confer any right of possession or property on such minister after he shall have ceased to be such officiating minister as aforesaid or after he shall have been legally removed from his office.

18. The deacon's court or committee of management of any congregation may fix the annual or other rent of each pew or sitting and collect any moneys which may be due in respect of any such pew or sitting and shall hold all moneys so collected on behalf of such congregation and apply the same as the General Assembly may by regulation or otherwise direct and such court or committee may from time to time with the approval of the Trustees exercise all or any of the functions of management of the property of the congregation.

19. Subject to the rights of congregations under clause 12 hereof it shall be lawful for the Trustees from time to time and at all times hereafter to mortgage, and for that purpose to convey and assure in fee or for any term of years all or any lands hereby vested in them and/or all or any lands which may hereafter be or become vested in them to any person, firm or company for securing such sum or sums of money with interest thereon as they may deem requisite or necessary for the purposes of the church generally or any of its funds, services, institutions or interests or for the purposes of any congregation of such church.

20. Subject as before enacted it shall and may be lawful for the trustees from time to time and at all times hereafter to sell any real and personal property now
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hereby vested in them or which shall hereafter vest in them by public auction or private contract as they may deem expedient at such prices as can be reasonably obtained for the same and when sold convey the property sold or any part thereof and thereupon the same shall vest in the purchasers their heirs executors administrators and assigns according to the estate and interest of the Trustees therein absolutely freed and discharged from all trusts excepting only express trusts affecting the same. The Trustees shall stand possessed of the net moneys obtained from any mortgage given as aforesaid and the net moneys arising from the sale or resumption of any property sold or resumed after payment and satisfaction of mortgage and other moneys chargeable against any such property and apply the same with the consent of the General Assembly in or towards the erection of buildings for the congregation to which the property mortgaged sold or resumed belongs the improvement repair enlargement or maintenance of the church the minister's dwelling school house and hall property of the congregation or in the purchase of other property and/or the erection of buildings for such congregation or otherwise use the same for the benefit of such congregation as the General Assembly shall direct, and if there shall be no congregation or if any such property shall be held for the church generally or for any fund institution activity or service thereof then the Trustees shall apply such net moneys according to the direction of the General Assembly.

21. The receipt in writing of a majority of the Trustees or of any person or persons authorised by such majority in writing to receive the same for the mortgage moneys raised on any property mortgaged by the Trustees or for the purchase money of any property sold under this Act or the moneys received on any resumption by any competent authority or for any other moneys which shall be payable to them when exercising any of the powers hereby conferred upon them or otherwise receivable by them under this Act shall exonerate the mortgagee and/or the purchaser and/or all other persons

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for the time being paying such moneys to the Trustees or the person or persons authorised as aforesaid to receive the same therefrom and from all liability to see to the application of the same and as to the loss mis-application or non-application thereof and from inquiring into the propriety necessity or regularity of any mortgage or sale lease or other dealing whatsoever and no such mortgagees purchasers or other persons shall be entitled or concerned to enquire whether any consents have been given or rules regulations and formalities have been made or imposed or whether the same if made or imposed have been observed and complied with in the premises.

22. The Trustees shall have power to regulate the time and place of their meetings and of the procedure to be followed thereat. The chairman shall be appointed annually by the Trustees and in the absence of the chairman from any meeting for any cause or reason the Trustees shall elect one of their number to be chairman of such meeting. They shall hold regular meetings and shall cause to be kept minutes of their proceedings and their resolutions which shall at all times be open for inspection by the official auditor of the church.

23. Whenever by any will deed or other instrument any property real or personal has been or shall be devised bequeathed given granted released conveyed or appointed or has been or shall be declared or directed to be held for or upon trust for or for the benefit of the Presbyterian Church of Australia in the State of New South Wales or any congregation of such church or any fund institution activity or service thereof respectively or shall be recoverable by or payable to the said church or any congregation thereof or by or to any such fund institution activity or service or for the religious social educational or charitable work of the church or be receivable by or payable to any officer or official thereof respectively for the benefit of the church generally or any of its funds institutions activities or services or that of any congregation the said will deed or instrument shall be construed and shall operate and take effect as though

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the Trustees were named therein and the acknowledgment or receipt of the Trustees or a majority of them or of any person or persons authorised in writing by the Trustees or a majority of them for any such property shall be a sufficient discharge and complete exoneration to the person or persons liable to pay deliver or transfer any such property under such will deed or instrument and all such property so devised bequeathed given granted released conveyed or appointed or declared or directed to be held in trust as aforesaid shall be held and dealt with by and be under the direction and control of the Trustees subject to the trusts declared concerning the same in any such will, deed or instrument so far as the same are capable of taking effect and the Trustees may call for and require payment transfer conveyance and delivery of the same to them.

24. Nothing in this Act contained or that may be done under this Act shall be deemed to prejudicially affect or deprive any person of any right whatsoever which he now has arising out of contract or tort and any such right which may at the time of the passing of this Act have been enforceable against the Trustees of the Presbyterian Church of Australia in the State of New South Wales and in respect of which the property hereby vested was liable shall be enforceable against the Trustees constituted under this Act.

25. Any rights (including choses in action) arising out of contract or tort relating in any wise to the real and personal property hereby vested in the Trustees which are at the time of the election of the Trustees vested in the Trustees of the Presbyterian Church of Australia in the State of New South Wales are hereby vested in the Trustees constituted by this Act on and from the date of their election and may be enforced by them.

26. Nothing contained in this Act shall be construed to repeal or in any way affect the provisions of a certain Private Act of the Legislature of New South Wales passed in the year one thousand eight hundred and
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seventy and intituled "An Act to enable the Trustees of certain church lands at Maitland to appropriate the income derivable from the same for the benefit of the Presbyterian Congregations of Maitland East and Maitland West and to confer extended powers of leasing on the Trustees and for other purposes."
