



# Anglican Church Diocese of Sydney

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**This was sent by email to all parishes on 21 December 2012.**

Dear Minister and Wardens

## **Standing Committee policy on ordinances**

I write to advise you of a new policy that the Standing Committee has recently put in place concerning the promotion of ordinances by parishes. Among other circumstances, an ordinance is necessary if you wish to deal with land in any respect (eg, sell, lease or mortgage) or vary the trusts under which land or other church trust property is held.

The Standing Committee will now require parishes to put in place a master trust ordinance before or at the same time as asking the Standing Committee to consider any other ordinance or asking the Finance Committee of the Standing Committee to consider passing a resolution under an existing ordinance. If your parish already has a master trust ordinance in place the policy will not apply.

A master trust ordinance is a standard form of ordinance approved by the Standing Committee which has the effect of consolidating all of the real property and funds held by the Anglican Church Property Trust Diocese of Sydney (the "Property Trust") for a particular parish into one trust fund to be held for the purposes of that parish. The Ordinance will set out how the capital and income of the trust fund may be used and applied. A \$500 ordinance fee is payable in relation to an application for a trust ordinance. A separate fee will apply where a parish is promoting another ordinance to deal with property or funds at the same time.

The policy aims to simplify the trust arrangements under which the Property Trust holds property for parishes. The Property Trust is required to have an Australian Business Number (ABN) and charity tax concession for each capacity in which it acts as trustee. In some cases it holds multiple ABNs to act as trustee for a parish. You may be aware that the Australian Charities and Not-for-Profits Commission (the "ACNC") has recently commenced operation. In due course the Property Trust will need to report to the ACNC in relation to each ABN that it holds (among other obligations). If a master trust fund is put in place for a parish the Property Trust can use a single ABN for that parish. In most cases there will also be advantage to a parish in simplifying its trust arrangements.

It is strongly advisable that a parish wishing to promote an ordinance to deal with its land or vary trusts, make early contact with SDS concerning its proposal so that the necessary documentation can be drafted and instructions given on what needs to be done to prepare the application for the Standing Committee. The Standing Committee meets on a monthly basis (with the exception of January and any months in which the Synod meets). It is advisable that a parish make contact with SDS no less than 3-4 weeks before the meeting at which it would like its ordinance considered. The Standing Committee's meeting dates are set out on the SDS website ( [www.sds.asn.au](http://www.sds.asn.au) ). If insufficient lead time is given, an application may need to be held over to the next month.

A copy of the standard form of master trust ordinance is attached if you require more detail concerning its provisions.

STEVE LUCAS  
**Manager, Legal Services**

# **[Parish] Trust Ordinance [year]**

No [number], [year]

## **Long Title**

An Ordinance to vary the trusts on which certain property is held and to establish the [ACPT – Parish] Trust.

## **Preamble**

A. Anglican Church Property Trust Diocese of Sydney (the “ACPT”) is the trustee of the property described in each of the cells in column 1 of the table in the Schedule (the “Existing Property”).

5 B. The property described in a cell in column 1 of the table in the Schedule is held on the trusts described in the corresponding cell in column 2 of the Schedule.

C. By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property is held, it is inexpedient to carry out and observe those trusts.

The Standing Committee of the Synod of the Diocese of Sydney Ordains as follows.

### **1. Name of ordinance**

10 This Ordinance is the [Parish] Trust Ordinance [year].

### **2. Declarations**

By reason of circumstances which have arisen after the creation of the trusts on which the Existing Property is held, it is inexpedient to carry out and observe those trusts, and –

15 (a) it is inexpedient that the Existing Property be held for the same or like purposes as the trusts on which the Existing Property is held, and

(b) it is expedient that power be given to the ACPT to lease or licence from time to time any part of the real property forming part of the trust fund.

### **3. Definition of Trust Fund**

In this Ordinance –

20 “trust fund” means –

(a) the Existing Property, and

(b) all real and personal property received or acquired by the ACPT from time to time as an addition to the trust fund.

### **4. Name of the trust fund**

25 The trust fund is to be known as the ACPT – [Parish] Trust.

**[Parish] Trust Ordinance [year]**

**5. New trusts**

Subject to the terms of this Ordinance, the trust fund is held upon trust for the purposes of the [provisional] parish of [Parish] (the "Parish").

**6. Capital of the trust fund**

5 (1) Any real property which forms part of the trust fund, may be used for one or more of the following purposes –

- (a) a church,
- (b) a residence for the minister, an assistant minister or any person employed by the wardens of a church in the Parish,
- 10 (c) a hall or halls,
- (d) a school or other place of assembly,
- (e) any purpose incidental to a purpose referred to in paragraph (a), (b), (c) or (d).

(2) Any personal property which forms part of the capital of the trust fund may be applied by the ACPT for one or more of the following purposes –

- 15 (a) the payment of all rates, taxes and charges incurred by the ACPT in relation to the trust fund, any property forming part of the trust fund or any transaction with property forming part of the trust fund, and
- (b) the costs of maintenance and repair of any property forming part of the trust fund required to meet minimum standards of maintenance and repair prescribed by Act, Regulation, Order or other law and applying to that property, and
- 20 (c) to the extent such personal property arises from a payment made to the ACPT by the wardens of a church in the Parish for the purpose of enabling the ACPT to make a payment under any contract made or to be made by the ACPT as trustee of the trust fund with the approval of a majority of the parish council, for that purpose, and
- 25 (d) for such purposes as the Standing Committee may direct by ordinance or resolution.

(3) Pending application under clause 6(2), any personal property which forms part of the capital of the trust fund is to be invested.

## **[Parish] Trust Ordinance [year]**

(4) If the wardens of a church in the Parish make a payment to the ACPT as an addition to the trust fund for the purpose of enabling the ACPT to make a payment under any contract made or to be made by the ACPT as trustee of the trust fund and –

(a) the full amount of the payment made by the wardens is not required by the ACPT for that purpose, the ACPT may pay to the wardens an amount equal to the excess, or

(b) the ACPT claims an input tax credit (as defined in the *New Tax System (Goods and Services) Act 1999*) in respect of the payment made under the contract, the ACPT may pay to the wardens an amount equal to the amount of the input tax credit (or proportionate part thereof where the payment made by the wardens is less than the payment made by the ACPT).

### **7. Application of the income of the trust fund**

(1) The income of the trust fund (other than income referred to in clause 7(2)), after paying all rates, taxes and charges incurred by the ACPT in relation to the trust fund, any property forming part of the trust fund or any transaction with property forming part of the trust fund, is to be applied as follows –

(a) if, from time to time, the personal property of the trust fund –

(i) is predominantly invested in the ACPT's Long Term Pooling Fund – no portion is to be capitalised, or

(ii) is not predominantly invested in the ACPT's Long Term Pooling Fund – 30% is to be capitalised, and

(b) the balance is to be paid to the wardens of the church of the Parish or, if there is more than one church, the wardens of the principal church of the Parish, to be applied for such purposes of the Parish as the parish council may from time to time determine, ~~[delete if provisional parish]~~ except the payment of the stipends, allowances and benefits paid or provided to the minister.

(2) The income of the trust fund arising from a lease or licence granted pursuant to clause 9(1) is to be applied in accordance with clause 7(1)(b).

### **8. Review**

(1) The authority to apply income under clause 7(1)(b) earned after the review date terminates on the review date.

**[Parish] Trust Ordinance [year]**

(2) For the purposes of subclause (1) “review date” means the date which is [5/10] years after the date this Ordinance commences or such later date as the Standing Committee approves from time to time by resolution.

(3) Any review of the application of income under clause 7(1)(b) must take into account the repair and maintenance of the building or other improvement situated on any real property which forms part of the trust fund in order to comply with the Heritage Act 1977.

**9. Powers – leasing and licensing of real property**

(1) With the written consent of the parish council of the Parish, the ACPT may lease or licence any part of the real property forming part of the trust fund, except any part which is consecrated or licensed for use as a church, if –

- (a) the term of the lease or licence (when aggregated with the term of any option to renew such lease or licence) does not exceed 5 years, and
- (b) the rental payable by the lessee or licensee is not more than \$50,000 per annum (including GST), or such other amount as may be determined by the Standing Committee by resolution from time to time.

(2) Nothing in this clause limits the powers of the ACPT under the Anglican Church Property Trust Ordinance 1965 or under any other ordinance.

**10. Commencement**

This Ordinance commences on the date of assent.

**Schedule**

<b>Column 1</b>	<b>Column 2</b>

**[Parish] Trust Ordinance [year]**

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

Chairman of Committees

I Certify that this Ordinance was passed by the Standing Committee of the Synod of the Diocese of Sydney on [date].

Secretary

I Assent to this Ordinance.

Archbishop of Sydney  
[date]