



**A Review of Religious and Certain
Other Community Organisation Acts**

Report

**Queensland
Law Reform Commission**

**A Review of Religious and Certain
Other Community Organisation Acts**

Report

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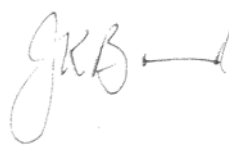
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To: The Honourable Jarrod Bleijie MP
Attorney-General and Minister for Justice

In accordance with section 15 of the *Law Reform Commission Act 1968*, the Commission is pleased to present its Report, *A Review of Religious and Certain Other Community Organisation Acts*.



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Chairperson



Mr JK Bond QC
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Mrs SM Ryan QC
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Abbreviations

Associations Incorporation Report (1980)

Queensland Law Reform Commission, *A Draft Associations Incorporation Act*, Report No 30 (1980).

Trusts Discussion Paper (2012)

Queensland Law Reform Commission, *A Review of the Trusts Act 1973 (Qld)*, Discussion Paper, WP No 70 (2012).

Trusts Interim Report (2013)

Queensland Law Reform Commission, *A Review of the Trusts Act 1973 (Qld)*, Interim Report, WP No 71 (2013).

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Executive Summary

TERMS OF REFERENCE

[1] The Commission was asked to review 29 Acts relating to various religious and community organisations with a view to recommending whether, in particular, any of the Acts are obsolete and can be repealed, or any of the Acts still required can be consolidated to reduce the number of separate Acts.

[2] Most of the Acts were introduced, at the request of the religious or community organisation concerned, to facilitate the vesting or management of the organisation's property, or to provide for the governance structure of the organisation.

[3] There are, however, considerable differences among the various Acts, which reflect the history of the individual religious and community organisations concerned, the variety of governance structures adopted by those organisations, and the range of particular, but different, concerns that prompted the introduction of the Acts in the first place.

[4] As a result, it has been necessary to consider each Act on its own terms, having regard to the purposes for which it was enacted and the extent to which, if at all, it still serves those purposes.

RECOMMENDATIONS FOR REPEAL, CONSOLIDATION AND AMENDMENT

[5] The Commission has recommended the repeal of the following 14 Acts:

- *All Saints Church Lands Act 1924*;
- *Anglican Church of Australia Act 1895 Amendment Act 1901* (following its amendment and the relocation of its remaining provisions to the *Anglican Church of Australia Act 1895*);
- *Anglican Church of Australia Act 1977* (following the relocation of its substantive provisions to the *Anglican Church of Australia Constitution Act 1961*);
- *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889*;
- *Ann Street Presbyterian Church Act 1889*;
- *Boonah Show Ground Act 1914*;
- *Chinese Temple Society Act 1964*;
- *Presbyterian Church of Australia Act 1971* (following its amendment and the relocation of its remaining provisions to the *Presbyterian Church of Australia Act 1900*);

- *Queensland Congregational Union Act 1967*;
- *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945*;
- *Roman Catholic Church (Northern Lands) Vesting Act 1941* (following its amendment and the relocation of its remaining provisions to the *Roman Catholic Church Lands Act 1985*);
- *Roman Catholic Relief Act 1830*;
- *Wesleyan Methodists, Independents, and Baptists Churches Act 1838*; and
- *Wesleyan Methodist Trust Property Act 1853*.

[6] Of the remaining Acts, the Commission has recommended the repeal, in whole or part, or amendment of a number of provisions to remove obsolete provisions or outdated or incorrect references.

[7] For the most part, the Acts and provisions that have been recommended for repeal have become obsolete simply with the effluxion of time and in the events that have occurred, rather than, as raised in the terms of reference, because of other legislation such as the *Associations Incorporation Act 1981* or the *Trusts Act 1973*.

Summary of Recommendations

The following table lists all of the recommendations made in this Report. The recommendations in relation to each religious or community organisation are also set out at the end of the chapter relating to the particular organisation.

Chapter 3 Anglican Church of Australia			
Anglican Church of Australia (Diocese of Brisbane) Property Act 1889 (Qld)			
3-1	<i>Anglican Church of Australia (Diocese of Brisbane) Property Act 1889 (Qld)</i>	Whole Act	Repeal. Declare s 11 to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
Anglican Church of Australia Act 1895 (Qld)			
3-2	<i>Anglican Church of Australia Act 1895 (Qld)</i>	Section 2	Omit. Declare it to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
3-3	<i>Anglican Church of Australia Act 1895 (Qld)</i>	Sections 4–6	Omit.
Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)			
3-4	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Section 2(2)	Omit.
3-5	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Schedule	Omit.
3-6	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Remaining provisions	Relocate the remaining provisions to the <i>Anglican Church of Australia Act 1895 (Qld)</i> .
3-7	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Whole Act	Repeal.
Bishopsbourne Estate and See Endowment Trusts Act 1898 (Qld)			
3-8	<i>Bishopsbourne Estate and See Endowment Trusts Act 1898 (Qld)</i>	Section 2(1)(a)–(c)	Omit.
All Saints Church Act 1924 (Qld)			
3-9	<i>All Saints Church Act 1924 (Qld)</i>	Whole Act	Repeal.

All Saints Church Act 1960 (Qld)			
3-10	<i>All Saints Church Act 1960 (Qld)</i>	Long title, Preamble and Schedule	Omit references to the land comprised in Certificate of Title number 302746, volume 1650 folio 236. Omit real property description for land comprised in Certificate of Title volume 1650 folio 235) and insert current property description (Title Reference 11650235).
3-11	<i>All Saints Church Act 1960 (Qld)</i>	Section 2	Omit.
Anglican Church of Australia Constitution Act 1961 (Qld)			
3-12	<i>Anglican Church of Australia Constitution Act 1961 (Qld)</i>	Long title, Preamble (unnumbered paragraph 5), sections 2 and 5	Omit references to the constitution 'contained in schedule 1' (or similar) and recast to refer to the constitution 'as amended from time to time'.
3-13	<i>Anglican Church of Australia Constitution Act 1961 (Qld)</i>	Sections 2, 4(1) and 5	Omit references to the 'Diocese of Carpentaria'.
3-14	<i>Anglican Church of Australia Constitution Act 1961 (Qld)</i>	Section 8	Omit— <i>'Interdict Act 1867'</i> . Insert— <i>'Commercial Arbitration Act 2013'</i> .
Anglican Church of Australia Act 1977 (Qld)			
3-15	<i>Anglican Church of Australia Act 1977 (Qld)</i>	Preamble, sections 3–5 and Schedule 1	Relocate to the <i>Anglican Church of Australia Constitution Act 1961 (Qld)</i> .
3-16	<i>Anglican Church of Australia Act 1977 (Qld)</i>	Whole Act	Repeal.
Chapter 4 Chinese Temple Society			
Chinese Temple Society Act 1964 (Qld)			
4-1	<i>Chinese Temple Society Act 1964 (Qld)</i>	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.

Chapter 5 Churches of Christ, Scientist			
Churches of Christ, Scientist, Incorporation Act 1964 (Qld)			
5-1	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Preamble unnumbered paragraphs 1, 4	(1) Omit— ‘Second Church of Christ, Scientist, Brisbane,’. (2) If it can be confirmed that it no longer exists, omit— ‘Third Church of Christ, Scientist, Brisbane,’. (3) Capitalise ‘the’ in— ‘the First Church of Christ, Scientist, in Boston, Massachusetts’; and ‘the Mother Church’. (4) Capitalise ‘manual’.
5-2	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Preamble unnumbered paragraph 2	Omit.
5-3	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Preamble unnumbered paragraph 3	Capitalise ‘manual’.
5-4	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 2(1)	(1) Omit section 2(1)(b). (2) If it can be confirmed that the Third Church of Christ, Scientist, Brisbane no longer exists, omit section 2(1)(c). (3) Renumber paragraph (d) as paragraph (b). (4) Omit— ‘Second Church of Christ, Scientist, Brisbane,’ in the body of the section (both occurrences).

			<p>(5) If it can be confirmed that it no longer exists, omit—</p> <p>‘Third Church of Christ, Scientist, Brisbane,’ in the body of the section (both occurrences).</p> <p>(6) Capitalise ‘manual’.</p>
5-5	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 2(1A)	<p>Omit.</p> <p>Declare it to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954</i> (Qld) applies.</p>
5-6	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 3(1)	<p>(1) Omit—</p> <p>‘Second Church of Christ, Scientist, Brisbane,’ (both occurrences).</p> <p>(2) If it can be confirmed that it no longer exists, omit—</p> <p>‘Third Church of Christ, Scientist, Brisbane,’ (both occurrences).</p>
5-7	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 4	<p>(1) Omit—</p> <p>‘body of association’.</p> <p>Insert—</p> <p>‘body or association’.</p> <p>(2) Omit—</p> <p>‘stated section 5’.</p> <p>Insert—</p> <p>‘stated in section 5’.</p> <p>(3) Omit—</p> <p>‘with the same powers, authorities, and privileges and subject to the same duties and liabilities mutatis mutandis as those provided in this Act in respect of the churches mentioned in section 2’.</p>

			(4) Capitalise 'the' in— 'the Mother Church'; and 'the First Church of Christ, Scientist, in Boston, Massachusetts'. (5) Capitalise 'manual'.
5-8	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 5(1)(b)	Capitalise 'the' in— 'the Mother Church'; and 'the First Church of Christ, Scientist, in Boston, Massachusetts'.
5-9	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 7A	Omit. Declare it to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
5-10	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 7B(3)(a)	Omit— ' , other than the Second Church of Christ, Scientist, Brisbane'.
5-11	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Schedule	In the heading, capitalise 'the' in— 'the Mother Church'; and 'the First Church of Christ, Scientist'.

Chapter 6 Presbyterian Church of Australia

Presbyterian Church of Australia Act 1900 (Qld)

6-1	<i>Presbyterian Church of Australia Act 1900 (Qld)</i>	Long Title*	Insert at the end— ' , and to make provision for union with other churches'.
6-2	<i>Presbyterian Church of Australia Act 1900 (Qld)</i>	Preamble*	Omit and insert the following, which:

* Those recommendations marked with an asterisk give effect, in whole or part, to Rec 6-23 for the consolidation of the relevant parts of the *Presbyterian Church of Australia Act 1971 (Qld)* with the *Presbyterian Church of Australia Act 1900 (Qld)*.

		<ul style="list-style-type: none"> • consolidates the current Preamble with those parts of the Preamble to the <i>Presbyterian Church of Australia Act 1971</i> (Qld) that continue to be relevant; • removes any duplication between the two Preambles; and • numbers the paragraphs of the Preamble—
<p>Preamble</p> <ol style="list-style-type: none"> 1 Whereas 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 Western Australia (now known as the Presbyterian Church in Western Australia) and the Presbyterian Church of Tasmania have resolved to unite and form one Presbyterian Church. 2 And whereas it is expedient that the said union should be effected on the terms and conditions prescribed in the Basis of Union and Articles of Agreement set forth in schedule 1 and as amended from time to time (the <i>scheme of union</i>). 3 And whereas on 24 July 1901 the said churches, holding the same doctrine, government, discipline and form of worship, agreed to unite on the basis of the said scheme of union, whereby there was constituted a body known as the Presbyterian Church of Australia, within which the said churches continued to exist as part of a federal ecclesiastical structure. 4 And whereas property is held by or on behalf of or in connection with the Presbyterian Churches of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania respectively, and by congregations and bodies connected with the said churches respectively, and by persons for and on behalf of the said churches respectively, or congregations of the said churches respectively. 5 And whereas it is expedient that all such property should after the said union be held subject to the terms and conditions of the said Basis of Union and Articles of Agreement as amended from time to time. 6 And whereas pursuant to the <i>Presbyterian Church Property Act 1909</i> certain lands situated within the State coming within the definition of <i>church property</i> and formerly held by individuals as trustees have now become vested in the Presbyterian Church of Queensland, being the body corporate duly incorporated by that name on 13 June 1876 pursuant to the provisions of the <i>Religious Educational and Charitable Institutions Act 1861</i>. 7 And whereas the affairs of the Presbyterian Church of Queensland are conducted in accordance with standing orders prepared by the general assembly of the Presbyterian Church of Australia and adopted by the Presbyterian Church of Queensland in conjunction with rules and forms of procedure adopted by the general assembly of the Presbyterian Church of Queensland. 		

	<p>8 And whereas it is expedient that the general assembly of the said Presbyterian Church of Australia should have the power to enter into union with other churches subject to due and proper safeguards for minorities.</p> <p>9 And whereas the assent of the Parliaments of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania is necessary to effect these objects.</p>		
6-3	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Section 1	<p>(1) Renumber as section 2.</p> <p>(2) Split existing section 1 into two subsections:</p> <ul style="list-style-type: none"> • Subsection (1) is to consist of the first clause of existing section 1, starting with the words 'From and after 7 November 1900'; • Subsection (2) is to consist of the balance of existing section 1, starting with the words 'Except as therein provided'. <p>(3) Omit— 'in the schedule'.</p> <p>Insert— 'in schedule 1, and as amended from time to time,'.</p> <p>(4) After the second occurrence of the words 'Articles of Agreement', insert— ' , as amended from time to time,'.</p> <p>(5) Omit— 'with the State'.</p> <p>Insert— 'within the State'.</p>
6-4	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Section 2	Renumber as section 1.
6-5	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	New Part headings*	<p>(1) Before section 1 (renumbered as section 2) insert part heading— 'Part 1 Adoption of Basis of Union and Articles of Agreement'.</p>

			(2) After section 1 (renumbered as section 2) insert part heading— ‘Part 2 Implementation of schedule 2’.
6-6	<i>Presbyterian Church of Australia Act 1900 (Qld)</i>	Schedule*	In the heading, omit— ‘The schedule’. Insert— ‘Schedule 1’.
<i>Presbyterian Church of Australia Act 1971 (Qld)</i>			
6-7	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Preamble	Omit (the relevant parts having been incorporated into the new Preamble to the <i>Presbyterian Church of Australia Act 1900 (Qld)</i> recommended at Rec 6-2).
6-8	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Sections 1–2	Omit.
6-9	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Schedule Pts I and II	Omit.
6-10	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1) opening words*	Omit— ‘at any time prior to the adoption pursuant to section 2 of the whole basis of union set forth in the schedule’.
6-11	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1)(a)*	Omit— ‘part III of the basis of union’. Insert— ‘schedule 2’.
6-12	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1)(b)*	(1) Omit— ‘part III of the basis of union’. Insert— ‘the provisions of schedule 2’. (2) Omit— ‘without the necessity of implementing the basis as a whole’.
6-13	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1)(c)*	Omit— ‘part III of the basis of union’.

			Insert— ‘the provisions of schedule 2’.
6-14	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1) final paragraph*	<p>(1) Omit— ‘of any of the descriptions specified in section 2 subsisting immediately before the publication of the said notice shall (without prejudice to the subsequent exercise of the power contained in section 2)’.</p> <p>Insert (from omitted section 2(1))— ‘held immediately before the publication of the said notice by or in trust for some or all the purposes of the Presbyterian Church of Queensland or the general assembly thereof, or any presbytery, session, committee of management, congregation, committee or council or board howsoever constituted or fund in connection with the said the Presbyterian Church of Queensland shall’.</p> <p>(2) Omit— ‘part III of the basis of union’.</p> <p>Insert— ‘schedule 2’.</p> <p>(3) Insert after section 3(1)— ‘<i>Editor’s note</i>— See Gazette, 11 December 1971, page 1713’.</p>
6-15	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(2)(a)*	Omit— ‘under part III of the said basis of union set forth in the schedule’.

			Insert— ‘under the provisions of schedule 2’.
6-16	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(2)(b) and (3)*	Omit— ‘the said part III’. Insert— ‘the provisions of schedule 2’.
6-17	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(2)(c) and (e)*	Omit— ‘the said part III’. Insert— ‘schedule 2’.
6-18	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(2)(d)*	(1) Omit— ‘under part III, section 18’. Insert— ‘under section 4 of schedule 2’. (2) Omit— ‘set forth in the schedule’. Insert— ‘set forth in schedule 1 and as amended from time to time’.
6-19	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(3)*	Omit— ‘defined in the said part’. Insert— ‘defined in the said schedule’.
6-20	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 4*	(1) Omit— ‘pursuant to either section 2 or 3’. Insert— ‘pursuant to section 3’. (2) Omit— ‘notice either section 2 or 3, as the case may be,’. Insert— ‘notice section 3’. (3) Omit— ‘property shall be redeemed’.

			<p>Insert— ‘property is to be taken’.</p> <p>(4) Omit— ‘to which section 2 or 3, as the case may be,’.</p> <p>Insert— ‘to which section 3’.</p>
6-21	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 5*	<p>Omit— ‘the basis of union set forth in the schedule’.</p> <p>Insert— ‘the provisions of schedule 2’.</p>
6-22	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Schedule Pt III*	<p>(1) Rename as ‘Schedule 2 Union with other churches’.</p> <p>(2) Renumber ss 15–18 as ss 1–4.</p> <p>(3) In s 18 (renumbered as s 4), omit— ‘pursuant to section 15’.</p> <p>Insert— ‘pursuant to section 1’.</p>
6-23	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Sections 3–5 and Schedule Pt III*, as amended in accordance with Recs 6-10 to 6-22	Relocate the amended sections and Schedule to the <i>Presbyterian Church of Australia Act 1900 (Qld)</i> by inserting after section 1 of that Act (renumbered as section 2) and the schedule to that Act, respectively.
6-24	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Whole Act	Repeal.
<i>Ann Street Presbyterian Church Act 1889 (Qld)</i>			
6-25	<i>Ann Street Presbyterian Church Act 1889 (Qld)</i>	Whole Act	<p>Repeal.</p> <p>Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.</p>

Chapter 7 Roman Catholic Church			
Roman Catholic Relief Act 1830 (Qld)			
7-1	<i>Roman Catholic Relief Act 1830 (Qld)</i>	Whole Act	Repeal.
7-2	<i>Oaths Act 1867 (Qld)</i>	Consequential amendment to section 1	Omit— 'the oath prescribed by the Act of Parliament commonly called the <i>Roman Catholic Relief Act 1830</i> or'.
Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)			
7-3	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Preamble paras 7, 8	Omit.
7-4	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Sections 3–4, 8, 13, 15	Omit.
7-5	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Section 5(1)	Omit— 'and as registered lessee in respect of the leases referred to in schedule 2'.
7-6	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Section 6(1)	Omit— 'form time to time'. Insert— 'from time to time'.
7-7	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Schedules 1–4	Omit.
7-8	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Remaining provisions	Relocate the remaining provisions to the <i>Roman Catholic Church Lands Act 1985 (Qld)</i> .
7-9	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Whole Act	Repeal.
Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945 (Qld)			
7-10	<i>Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945 (Qld)</i>	Whole Act	Repeal.
Roman Catholic Church Lands Act 1985 (Qld)			
7-11	<i>Roman Catholic Church Lands Act 1985 (Qld)</i>	Schedules 1–4	Omit real property descriptions (but retain the Schedules).
Roman Catholic Church (Incorporation of Church Entities) Act 1994 (Qld)			
7-12	<i>Roman Catholic Church (Incorporation of Church Entities) Act 1994 (Qld)</i>	Whole Act	No change.

Chapter 8 Salvation Army			
<i>Salvation Army (Queensland) Property Trust Act 1930 (Qld)</i>			
8-1	<i>Salvation Army (Queensland) Property Trust Act 1930 (Qld)</i>	Preamble, unnumbered paragraph 9 (after 'to determine and enforce the laws and')	Omit— 'tot'. Insert— 'to'.
Chapter 9 Uniting Church in Australia			
<i>Uniting Church in Australia Act 1977 (Qld)</i>			
9-1	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 5, definition of 'the basis of union'	Insert at the end of the current definition— 'as amended from time to time'.
9-2	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 16(1)	Omit— 'Subject to subsection (2),'
9-3	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 16(2)	Omit.
9-4	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 31	Omit— 'writ, statement of claim, summons'. Insert— 'claim, application'.
9-5	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 33(4)	Omit. Insert— 'A regulation made under this section is not subordinate legislation within the meaning of the <i>Statutory Instruments Act 1992</i> '.
9-6	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 39	Omit.
<i>Queensland Congregational Union Act 1967 (Qld)</i>			
9-7	<i>Queensland Congregational Union Act 1967 (Qld)</i>	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.

<i>Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)</i>			
9-8	<i>Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)</i>	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
<i>Wesleyan Methodist Trust Property Act 1853 (Qld)</i>			
9-9	<i>Wesleyan Methodist Trust Property Act 1853 (Qld)</i>	Whole Act	Repeal.
Chapter 10 Boonah Show Ground			
<i>Boonah Show Ground Act 1914 (Qld)</i>			
10-1	<i>Boonah Show Ground Act 1914 (Qld)</i>	Whole Act	Repeal.
Chapter 11 Guides Queensland			
<i>Guides Queensland Act 1970 (Qld)</i>			
11-1	<i>Guides Queensland Act 1970 (Qld)</i>	Sections 4(3), 6(2)–(2A)	Omit.
11-2	<i>Guides Queensland Act 1970 (Qld)</i>	Section 6(3) opening words	Omit— 'or (2A)'.
11-3	<i>Guides Queensland Act 1970 (Qld)</i>	Section 6(4)–(7)	Omit references to— 'controlled group'; and 'controlling authority'.
11-4	<i>Guides Queensland Act 1970 (Qld)</i>	Section 6(4)–(6)	Omit references to — 'summons'. Insert— 'application'.
11-5	<i>Guides Queensland Act 1970 (Qld)</i>	Section 7(b)	After the words 'shall be submitted to the', insert— 'next ordinary'.
11-6	<i>Guides Queensland Act 1970 (Qld)</i>	Section 13	Omit.
Chapter 12 Queensland Temperance League			
<i>Queensland Temperance League Lands Act 1985 (Qld)</i>			
12-1	<i>Queensland Temperance League Lands Act 1985 (Qld)</i>	Sections 3–4	Omit.

Chapter 13			
Returned & Services League of Australia (Queensland Branch)			
<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>			
13-1	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 2, definition of 'authorised representative'	Omit— 'State congress'. Insert— 'State AGM'.
13-2	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 2	Insert— ' State AGM means the general meeting of all district branches and sub-branches convened in accordance with the constitution of the Returned & Services League of Australia (Queensland Branch), as amended from time to time.'
13-3	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 7(2)(b)	Omit— 'kept'. Insert— 'be kept'.
13-4	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 13	Omit— 'to, and shall cause to be made'. Insert— 'to make, and shall cause to be made,'
13-5	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 14(3) and (4)	Omit— 'subsection (3)'. Insert— 'subsection (2)'.
Chapter 14			
Scout Association of Australia Queensland Branch			
<i>Scout Association of Australia (Queensland Branch) Act 1975 (Qld)</i>			
14-1	<i>Scout Association of Australia (Queensland Branch) Act 1975 (Qld)</i>	Section 3(1)(b)	Omit— 'Policy Organization and Rules of the Scout Association of Australia'. Insert— 'Scout Australia Policy and Rules'.

14-2	<i>Scout Association of Australia (Queensland Branch) Act 1975 (Qld)</i>	Sections 3(3)–(3A), 5–6	Omit.
Chapter 15			
United Grand Lodge of Antient Free and Accepted Masons of Queensland			
<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>			
15-1	<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>	Section 3D	Omit. Insert— ‘3D Board may invest in authorised investments The Board may invest moneys held by it in any investment that would be an authorised investment under Part 3 of the <i>Trusts Act 1973 (Qld)</i> .’
15-2	<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>	Section 6(1)	Omit— ‘sale’. Insert— ‘transfer’.
15-3	<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>	Section 13	Omit— ‘to, and shall cause to be made’. Insert— ‘to make, and shall cause to be made,’.

Chapter 1

Introduction

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INTRODUCTION

1.1 The Commission has been asked by the Attorney-General to review 29 Acts relating to various religious and community organisations with a view to recommending whether:¹

- (a) any of the Acts are obsolete and can be repealed;
- (b) any of the Acts still required can be consolidated to reduce the number of separate Acts;
- (c) the drafting of any of the Acts still required can be simplified and modernised; and
- (d) particular provisions of the Acts can be repealed or can refer to laws of general application, such as the *Associations Incorporation Act 1981* and the *Trusts Act 1973*.

1.2 Most of the Acts being reviewed are of limited application and were introduced, usually at the request of the religious or community organisation concerned, to facilitate the vesting or management of the organisation's property, or to provide for the governance structure of the organisation.²

1.3 Although the purposes of most of the Acts can be described in those broad terms, there are nevertheless considerable differences among the various Acts, both in terms of their subject matter and the way in which they deal with particular issues. Those differences reflect the history of the individual religious and community organisations concerned, the variety of governance structures adopted by those organisations, and the range of particular, but different, concerns that prompted the introduction of the Acts in the first place.

1.4 As a result, it has been necessary to consider each Act on its own terms, having regard to the purposes for which it was enacted and the extent to which, if at all, it still serves those purposes.

¹ The terms of reference are set out in full in Appendix A to this Report.

² The exception is the *Roman Catholic Relief Act 1830* (Qld), which was passed to relieve Roman Catholics from a number of penalties and civil disabilities to which they were then subject.

CONSULTATION

1.5 In consulting with the various religious and community organisations, the Commission identified particular issues in relation to each Act and sought the views of the relevant religious or community organisations on those specific issues. The Commission also placed a notice calling for submissions on the Queensland Government 'Get Involved' website, and invited submissions from the Not-For-Profit-Law Committee of the Queensland Law Society.

1.6 The Commission received 18 submissions from the religious and community organisations concerned. A list of those organisations is included in Appendix B to this Report.

1.7 The Commission would like to thank all of those organisations for their input into this review. As well as providing their views on the issues raised, the organisations also provided factual (and, in some cases, historical) information that was invaluable to the Commission in determining whether the Acts, or any of their provisions, are now obsolete.

1.8 The Commission would also like to thank the Department of Natural Resources and Mines for its assistance in undertaking the investigative real property searches that were required in order to obtain the current title details for the many outdated real property descriptions that are contained in the various Acts.

RECOMMENDATIONS

1.9 The Commission has recommended the repeal of 10 Acts in their entirety, and the repeal of a further four Acts following the relocation of provisions of those Acts to other related Acts.

1.10 Of the remaining Acts, the Commission has recommended the repeal, in whole or part, or amendment of a number of provisions to remove obsolete provisions or outdated or incorrect references.

1.11 The Commission's approach for determining the question of whether an Act, or the provision of an Act, is obsolete is described in Chapter 2.

1.12 For the most part, the Acts and provisions that have been recommended for repeal have become obsolete simply with the effluxion of time and in the events that have occurred, rather than because of the application of other legislation such as the *Associations Incorporation Act 1981* (Qld) or the *Trusts Act 1973* (Qld). For example, the Acts or provisions have vested the property that they were enacted to vest, or have discharged, from a prior trust, the property that was sought to be freed from that trust.

1.13 The recommendations in relation to each religious or community organisation are set out at the end of the chapter relating to that organisation. A consolidated table of all of the recommendations is also set out in the Summary of Recommendations at the beginning of this Report.

Chapter 2

Overview

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INTRODUCTION

2.1 The terms of reference relate to 29 separate Acts relating to particular religious and other community organisations. Each Act responds to and reflects the unique legal and factual history and circumstances of the organisation concerned. They are special Acts, rather than Acts of general application, many of which were introduced at the request of the relevant organisation to address or overcome particular legal issues. As such, there are many differences in the specific scope and content of the Acts.

2.2 Nevertheless, at a general level, many of the Acts deal in some way with one or more common matters. In particular, ensuring that property can be held and dealt with by, or for, the relevant organisation in an appropriate way, either generally or in relation to particular property, is an underlying concern in many of the Acts.¹ To this end, the Acts commonly deal with one or more of the following matters:

- the vesting of property (usually land) in particular persons, either as trustees or incorporated entities (or both);
- the conferral of certain powers (principally related to property) on particular persons, either as trustees or incorporated entities (or both);
- the declaration, clarification or variation of trusts of property held by or for the relevant organisation;

¹

Cf *Roman Catholic Relief Act 1830* (Qld), which is of a different nature to the other Acts under review.

- the incorporation of the organisation's governing body or office-holders or the trustees of its property (or, in one instance, the whole membership of the organisation); and
- in some instances, the recognition for particular purposes of the internal rules of the organisation.

2.3 These matters are often interconnected. They are also set against the background of certain wider legal issues, notably, the nature of voluntary associations, the use of trusts, and the mechanisms and effects of incorporation.

2.4 This chapter gives an overview of the main background legal issues relevant to the review, including relevant trusts and incorporation legislation. It also outlines the Commission's general approach to determining the extent to which the Acts, or provisions of the Acts, can be repealed, replaced, updated or consolidated.

VOLUNTARY ASSOCIATIONS

2.5 All of the Acts under review relate to religious and community organisations that fall into the general legal category of voluntary, non-profit (or not-for-profit) associations.²

Separate legal personality

2.6 Where such an association is unincorporated, it is not ordinarily recognised as 'a separate legal entity with its own legal personality apart from its individual members' from time to time.³

2.7 This applies equally to churches and other religious associations as to other unincorporated non-profit associations.⁴ (Unlike England, there is no established Church in Australia.)⁵

2.8 The absence of a separate legal personality has a number of problematic implications including, in particular, that the association itself is incapable in its own

² Voluntary, non-profit associations are distinguished from partnerships and other businesses that are formed for the primary purpose of making profits for their members. That is not to say that a non-profit association cannot make a profit, but that ordinarily any pecuniary profit or gain must be used for the purposes of the association, and not distributed to its members while the association remains in existence: see AS Sievers, *Associations and Clubs Law in Australia and New Zealand* (Federation Press, 3rd ed, 2010) 1, 4–5; GE Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 26–7. In light of this, the term 'not-for-profit' is sometimes preferred: see, eg, Charities Definition Inquiry (Commonwealth Government of Australia), *Report of the Inquiry into the Definition of Charities and Related Organisations* (2001) 93–4.

³ AS Sievers, *Associations and Clubs Law in Australia and New Zealand* (Federation Press, 3rd ed, 2010) 6. See also, eg, *Kibby v Registrar of Titles* [1999] 1 VR 861, 869–70 (Mandie J).

⁴ See, eg, *Scandrett v Dowling* (1992) 27 NSWLR 483, 491–2 (Mahoney JA); *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95, 117–18 (Kirby J).

⁵ In England, the Church of England is regarded as the established church with the consequence that ecclesiastical law is part of the law of England, and the Church has a 'unique' but 'amorphous' juridical position: *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2004] 1 AC 546, 596–7 (Lord Rodger). In contrast, in Australia, s116 of the *Australian Constitution* prohibits the Commonwealth from legislating to establish any religion. See generally P MacFarlane and S Fisher, *Churches, Clergy and the Law* (Federation Press, 1996) 23–4.

name of acquiring and holding property, entering into enforceable contracts, or suing and being sued.⁶

2.9 These difficulties are typically overcome through two main mechanisms: the use of trustees and incorporation.⁷

Almost invariably, persons associated with the body will find it inconvenient to hold 'association' property in all of their names, and so will arrange for it to be vested in a limited group of their number (for example, a committee) or a corporation controlled by key stakeholders. The law of charitable trusts can also be used to ensure that property cannot be diverted from stated purposes ...

2.10 In simple terms, a trust involves the holding of property by a legal owner (the trustee), for the benefit of other persons (the beneficiaries) or for a recognised purpose (usually a charitable purpose).⁸ This creates a separation between the legal ownership and beneficial enjoyment of the property, which is reinforced by a number of equitable duties imposed on the trustee, including the obligation to act honestly and in good faith for the benefit of the beneficiaries⁹ or to further the purpose of the trust.¹⁰

2.11 Ordinarily, property cannot remain subject to a trust forever.¹¹ However, this does not apply to charitable trusts, which are capable in certain circumstances of enduring indefinitely.¹² Such trusts must be for recognised charitable purposes, including, relevantly for example, the advancement of religion.¹³

2.12 The use of trusts can therefore avoid 'the problems inherent in attempting to establish ownership by a fluctuating group of individual persons'.¹⁴ As was said in the context of the Anglican Church of Australia, for example:¹⁵

⁶ See generally AS Sievers, *Associations and Clubs Law in Australia and New Zealand* (Federation Press, 3rd ed, 2010) 7–8, ch 2; and, eg, *Freeman v McManus* [1958] VR 15, 18–21 (O'Bryan J).

⁷ *Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis* (2007) 70 NSWLR 565, 576–7 (Mason P; Ipp and McColl JJA agreeing).

⁸ As to the nature and characteristics of a trust, see generally GE Dal Pont, *Equity and Trusts in Australia* (Thomson Reuters, 5th ed, 2011) [16.05]–[16.10]; *Trusts Discussion Paper* (2012) [3.1]–[3.11].

⁹ *Armitage v Nurse* [1998] Ch 241, 253–4 (Millett LJ).

¹⁰ *Canterbury Orchestra Trust v Smitham* [1978] 1 NZLR 787, 809 (Woodhouse J).

¹¹ Because of the 'rule against perpetuities', the disposition of an interest in property is void if the interest will not vest within the required time, namely, in Queensland, either the period not exceeding 80 years that is specified by the person making the disposition, or the common law period of a life or lives in being plus 21 years: see JD Heydon and MJ Leeming, *Jacobs' Law of Trusts in Australia* (LexisNexis Butterworths, 7th ed, 2006) [928]–[929]; *Property Law Act 1974* (Qld) s 209(1).

¹² See GE Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) [6.10].

¹³ As to the charitable purposes recognised under the law of trusts in Queensland, see *Trusts Act 1973* (Qld) s 103, discussed in *Trusts Interim Report* (2013) [13.4]–[13.6]. Cf the definitions of 'charity' and 'charitable purpose' in *Charities Act 2013* (Cth), which will apply for the purposes of Commonwealth legislation, including tax legislation, when that Act and the *Charities (Consequential Amendments and Transitional Provisions) Act 2013* (Cth) commence. Amendments by the Social Services and Other Legislation Amendment Bill 2013 (Cth) s 3, sch 1A will postpone the commencement of the relevant provisions from 1 January 2014 to 1 September 2014.

¹⁴ LexisNexis, *Halsbury's Laws of Australia* (at 2 July 2010) [435-270].

¹⁵ *Glebe Administration Board v Commissioner of Pay-Roll Tax* (1987) 10 NSWLR 352, 357 (Priestley JA).

[W]hen it was intended that property be owned by the Church, the legal ownership of that property had to be vested in a legal entity or entities, as it was impossible for it to be owned by all the individuals who comprised the total membership of the voluntary association called the Church. To state the obvious, that entire membership could never even be listed at any particular time. Property could only effectively be placed in 'church ownership' by vesting it in a legal entity or entities bound to hold it on trust for church purposes. For this trust to be enforceable by legal sanction (and to avoid invalidation by the rule against perpetuities) the purposes for which the trustee was bound to hold the property had to be charitable purposes ...

2.13 Even where an association does not itself establish a trust, property given to or for the benefit of 'the association' might be held by particular individuals as trustees,¹⁶ for example, as a result of a bequest in a will or a deed of grant in trust. In this way, property of a religious or community association might be subject to numerous and different types of trusts.

2.14 The second mechanism to address the absence of a separate legal personality is more direct, and involves the incorporation of the association (or some constituent part of it). The fundamental feature of a corporation (as distinguished from an unincorporated association) is that it is recognised as 'a legal entity distinct from its members', that is, as a separate legal person.¹⁷

2.15 Under the common law (from which the English legal concept of the corporation developed),¹⁸ a duly formed corporation is said to have a number of attributes, namely, perpetual succession and the power in its own name to hold property, sue and be sued, have a common seal, and make rules binding on its members.¹⁹ Where, as is typically the case today, a corporation is created by or under a statute, however, the particular powers and capacities of the corporation will depend on the terms of the statute, and might be more restrictive than the common law powers.²⁰

2.16 At one time, incorporation was achieved by royal charter or special Act of Parliament. Later, incorporation became available to non-profit associations as

¹⁶ See generally GE Dal Pont, *Equity and Trusts in Australia* (Thomson Reuters, 5th ed, 2011) [17.160].

¹⁷ LCB Gower, *The Principles of Modern Company Law* (Stevens & Sons, 3rd ed, 1969) 68. See also *The Australasian Temperance and General Mutual Life Assurance Society Ltd v Howe* (1922) 31 CLR 290, 300–1 (Isaacs J).

¹⁸ Much of its earliest development, from the 13th and 14th centuries, was influenced by the activities of the Catholic Church: Sir William Holdsworth, *A History of English Law* (Methuen and Sweet and Maxwell, 5th ed, 1942, 1966 reprint) vol 3, 470–1. Two types of corporation were recognised: 'corporations aggregate', which were developed to 'meet the needs of organised groups' and involved the recognition of a legal entity 'that would survive the individuals of whom at any moment they might be composed'; and 'corporations sole', which involved the recognition of a series of successors to a particular position or office as an artificial legal person: RP Austin and IM Ramsay, LexisNexis, *Ford's Principles of Corporations Law* (at October 2013) [2.030], [2.050].

¹⁹ See Sir William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765) vol 1, 463; LexisNexis, *Australian Corporation Law Principles & Practice* (June 2012) [2.1.0015].

²⁰ The common law powers applied to all corporations created by royal charter but were not necessarily automatically implied whenever a corporation was created by statute: see *Baroness Wenlock v River Dee Co* (Unreported, Court of Appeal, Bowen LJ, 9 May 1883) quoted in full in *Baroness Wenlock v River Dee Co* (1887) 36 Ch D 674, 675 n 1; RP Austin and IM Ramsay, LexisNexis, *Ford's Principles of Corporations Law* (at October 2013) [4.045].

'companies limited by guarantee' under general companies legislation²¹ or as incorporated associations under non-profit associations incorporation legislation.²²

2.17 In the 'sphere of church administration', trusts may sometimes have been preferred to incorporation,²³ although it is now not uncommon for larger religious organisations to manage aspects of their affairs through corporate entities.²⁴

2.18 The two mechanisms of trusts and incorporation will often co-exist. For example, the office-holders of an association might be incorporated to act as the legal owners of the association's property, but additionally be made trustees of that property to ensure that it is used only for particular purposes.

Internal rules

2.19 A further issue that arises in the context of voluntary, non-profit associations concerns the legal effect of their internal rules.

2.20 A voluntary, non-profit association is formed by the voluntary action of the people who agree to its formation and the terms of association. In most cases, the founding members will develop a constitution or written rules dealing with such matters as the association's purposes and objects, eligibility for membership, and the management of the association.²⁵

2.21 These rules constitute a private, consensual arrangement between the members, but not necessarily a legally binding contractual agreement.²⁶ In the context of churches and other religious associations, this arrangement is often referred to as a 'consensual compact,' being an agreement binding in conscience on the basis of 'a willingness to be bound to [the compact] because of shared faith'.²⁷

2.22 The traditional approach is that the courts will not intervene in the internal affairs of a voluntary association unless the dispute involves a proprietary right or if it was clearly intended that the association's rules would be legally binding.²⁸ The

²¹ See *Corporations Act 2001* (Cth) s 112(1). A company limited by guarantee is defined in s 9 as one 'formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up'.

²² In Queensland, see *Associations Incorporation Act 1981* (Qld).

²³ MG Horsley, *The Law and Administration of Associations in Australia* (Butterworths, 1976) 60.

²⁴ See, for example, 'Mercy Services', a company limited by guarantee, which is owned and sponsored by the Council of the Institute of Sisters of Mercy of Australia & Papua New Guinea: Mercy Services, *About Us: Mercy Services* (2013) <<http://mercyservices.org.au/about-us/mercy-services/>>.

²⁵ See generally AS Sievers, *Associations and Clubs Law in Australia and New Zealand* (Federation Press, 3rd ed, 2010) 1, 11–17.

²⁶ *Cameron v Hogan* (1934) 51 CLR 358, 371 (Rich, Dixon, Evatt and McTiernan JJ), 384 (Starke J).

²⁷ *Scandrett v Dowling* (1992) 27 NSWLR 483, 554 (Priestley JA).

²⁸ *Cameron v Hogan* (1934) 51 CLR 358, 371, 377–8 (Rich, Dixon, Evatt and McTiernan JJ), 383–4 (Starke J). See also, eg, *Scandrett v Dowling* (1992) 27 NSWLR 483. As to other circumstances in which the court might intervene, see AS Sievers, *Associations and Clubs Law in Australia and New Zealand* (Federation Press, 3rd ed, 2010) 63 ff.

scope of the court's jurisdiction has been particularly noted in the context of religious associations:²⁹

From the point of view of the common law, a Church is simply a voluntary association of individuals bound by agreement. In *MacQueen*, at 690, Griffith CJ in the context of the Presbyterian Church of Queensland remarked:³⁰

'The powers of a Court of law to interpret and give effect to such a compact when any civil right depends upon its terms are too well established to need any citation of authority to support them.'

To the same effect was the opinion of Gibbs J (with whom Stephen, Mason and Jacobs JJ agreed) in *Grant*, at 600:³¹

'It hardly needs to be said that in this country the law recognises a complete freedom of conscience in matters of religion. No one is compelled to adhere to, or to abjure, any particular religious opinions. Any member of a Church is perfectly free to leave that Church and join another which professes different beliefs and has a different mode of government. No Court may prevent a citizen from abandoning religious beliefs, previously thought to be fundamental, and embracing a new and essentially different faith. But there are various ways in which the courts necessarily acquire jurisdiction to determine disputes between members of a religious congregation [I]f property is held on trust for a Church questions may arise as to what persons are entitled to the trust property and for what purposes it must be applied. Where a schism has developed as a result of the decision of some members of a Church to enter into union with another Church, the question may arise whether the trust property is thereafter to be held for those who become members of the new united church or for those, however few, who remain in the original association.'

...

In statutes dealing with the 'temporal affairs' of ... [a] Church, reference is occasionally made to theological, scriptural and traditional matters of religious belief. To that extent, such considerations are imported into the civil law. Nevertheless, a court of law will tread warily before pretending to a knowledge of the issues at stake in conflicts over religious doctrine. History and contemporary affairs teach the otherwise unwary that such issues can engender fierce passions. Judges may be competent to dispose of competing property claims. But their competence to determine disputed issues of religious belief is highly doubtful. (references omitted; notes added)

2.23 Where the internal rules of a church are replicated in a statute, the question arises whether 'the making of decisions under those rules becomes a matter of public law'.³²

²⁹ *Uniting Church in Australia Property Trust (NSW) v Vincent* [1994] NSWCA 328, 7–8 (Kirby P).

³⁰ See *MacQueen v Frackelton* (1909) 8 CLR 673. Isaacs J (at 713) explained in that case that the 'expressions "civil right" and "temporal right" are sometimes used, but it is always directly or indirectly in relation to property actually or potentially within the enjoyment of the person complaining'.

³¹ See *A-G (NSW) v Grant* (1976) 135 CLR 587.

³² S Gorman, 'Legislative Recognition of Churches and the Implications for Judicial Review' (2002) 9 *Australian Journal of Administrative Law* 84, 91.

2.24 This issue was considered by the New South Wales Court of Appeal in *Scandrett v Dowling*.³³ That case concerned an application for an injunction to restrain a bishop from ordaining women as priests, without the approval of the General Synod, on the basis that it would constitute a breach of the Constitution of the Anglican Church of Australia. The Constitution is set out in the *Anglican Church of Australia Constitution Act 1961* (NSW). Section 2 of that Act relevantly provides that the provisions of that Constitution and any canons and rules made under it shall be binding on the members of the Church in New South Wales 'for all purposes connected with or in any way relating to the property of the Church of England in Australia'.³⁴

2.25 The Court of Appeal concluded that the only terms of the Constitution that have any statutory force are those capable of being used for a purpose relating to Church property.³⁵ As Priestley JA explained:³⁶

Section 2 of Act 16 of 1961 in my opinion makes it as clear as words can make it that the binding *legal* effect of the Constitution is limited to purposes connected with or in any way relating to the property of the Church. Matters of faith and organisation not connected or related to Church property are not made any more binding at law than they were before the Act was passed.

2.26 Nor did the Court accept that the rules of the Church, as embodied in the Constitution, constituted a legally enforceable contract, except in relation to matters of church property.³⁷

2.27 Apart from the question of whether the rules are legally enforceable, difficulties can sometimes arise in relation to the property of a church if changes are made to its internal rules in particular circumstances. From time to time, individual churches may join together to form a common church. The formation of such a 'union' may involve the adoption of a new constitution which alters the statement of fundamental beliefs of the church. This gives rise to particular difficulties where property is held on trust for purposes connected with those fundamental beliefs.³⁸

The practical problems involved in effecting such a union with other churches [are] considerable. Not the least of them [is] presented by the decision of the House of Lords in *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 the effect of which can be briefly stated as being that, where property of an association such as a church is held in trust on terms or for purposes which include fundamental tenets of faith or belief, such property cannot be diverted or applied to the purposes of another association resulting from a union of churches if the fundamental tenets or purposes of the united association differ from those of the former. ... in the absence of a power to alter the fundamental tenets, or of the unlikely event of a unanimous vote of all members of the association agreeing to such an alteration, the rule established

³³ (1992) 27 NSWLR 483.

³⁴ That provision is in virtually identical terms to *Anglican Church of Australia Constitution Act 1961* (Qld) s 2.

³⁵ *Scandrett v Dowling* (1992) 27 NSWLR 483, 512–13, 562 (Priestley JA; Hope AJA agreeing).

³⁶ *Ibid* 512–13.

³⁷ *Ibid* 508, 510 (Mahoney JA), 513, 554, 564 (Priestley JA; Hope AJA agreeing).

³⁸ *Bailey v The Uniting Church in Australia Property Trust (Qld)* [1984] 1 Qd R 42, 48 (McPherson J; Sheahan J agreeing). See also at 50.

by that decision is that a dissenting minority who continue to adhere to the original tenets or purposes are entitled to claim the property that is bound by or devoted to those original tenets or purposes.

2.28 These issues are relevant for some of the Acts under review which give recognition to the organisation's internal rules.³⁹ Most of the Acts also involve trusts and/or incorporated entities.

TRUSTS, INCLUDING DEEDS OF GRANT IN TRUST

2.29 Almost all of the Acts under consideration in this review contain provisions concerning trusts, including provisions to:

- vest particular property in trustees;
- confer particular powers on trustees; or
- declare, clarify or vary the trusts on which property is to be held.

2.30 In particular, a number of the Acts relate to property that was granted by deed of grant in trust. As explained below, these trusts are subject to particular restrictions.

The *Trusts Act 1973* (Qld)

2.31 The *Trusts Act 1973* (Qld) is the principal (although not the only) statute that supplements the general law of trusts in Queensland.⁴⁰ Although it is not a code, the Act contains a number of detailed provisions covering matters such as the appointment of, and vesting of property in, new trustees. It also includes detailed provisions about trustees' powers to invest and deal with property, including powers to sell, and limited powers to lease and mortgage trust property.⁴¹

2.32 The powers conferred by the Act on trustees are in addition to those given by any other Act or by the instrument, if any, creating the trust.⁴² In general, those powers apply 'if and so far only as a contrary intention is not expressed' in the trust instrument, and have effect subject to the terms of that instrument.⁴³ However, as an exception to this, many of the powers conferred by the Act are expressed to apply 'whether or not' a contrary intention is expressed in the trust instrument.⁴⁴

³⁹ See, eg, *Presbyterian Church of Australia Act 1900* (Qld).

⁴⁰ See, eg, *Trustee Companies Act 1968* (Qld); *Public Trustee Act 1978* (Qld); and *Land Act 1994* (Qld) ch 3 pt 1 (Reserves and deeds of grant in trust).

⁴¹ See, eg, *Trusts Act 1973* (Qld) ss 21, 32, 33(1), 36–37, 45, 57. The Act also gives the court power to confer additional powers on trustees in certain circumstances: s 94. See *Trusts Interim Report* (2013) for a detailed discussion of the *Trusts Act 1973* (Qld).

⁴² *Trusts Act 1973* (Qld) s 4(4).

⁴³ *Trusts Act 1973* (Qld) s 4(4).

⁴⁴ See, eg, *Trusts Act 1973* (Qld) s 31(1). In contrast, most of the powers conferred under the former *Trustees and Executors Act 1897* (Qld) did not override the terms of the instrument creating the trust.

2.33 In general, the *Trusts Act 1973* (Qld) applies ‘to every trust ... whether constituted or created before or after the commencement of this Act’.⁴⁵ There are, however, exceptions — including trusts created by deeds of grant in trust under the *Land Act 1994* (Qld).

The *Land Act 1994* (Qld)

2.34 Provision is made under the *Land Act 1994* (Qld) for the Governor in Council to ‘grant, in fee simple in trust, unallocated State land for use for a community purpose’.⁴⁶ Similar provision, for the grant in trust of Crown land required for a public purpose, was also made in earlier land legislation.⁴⁷

2.35 The land legislation has been treated as a code in relation to trusts created by deeds of grant in trust. As was explained by Williams J in relation to the former *Land Act 1962* (Qld):⁴⁸

the provisions therein constitute a code of law relating to deeds of grant in trust, and ... the law relating to such trusts is primarily to be found in the statutes providing for their creation. It may be that some provisions of the *Trusts Act 1973–1981* apply to such trusts, but the *Trusts Act* could not, in my view, confer on a trustee pursuant to a deed of grant in trust a power specifically negated by the statute dealing with the granting of such deeds; to achieve that result the provision in the *Trusts Act* would have to be explicit.

2.36 This is now made explicit in the *Land Act 1994* (Qld). It provides that all existing deeds of grant in trust are regulated under Chapter 3, Part 1 of the *Land Act 1994* (Qld),⁴⁹ and the *Trusts Act 1973* (Qld) does not apply, and is taken never to have applied, to such trusts.⁵⁰

2.37 Among other things, Chapter 3, Part 1 of the *Land Act 1994* (Qld) includes provisions dealing with the appointment and removal of trustees, trustees’ administrative and accounting functions, and trustees’ powers.

2.38 A trustee’s functions under the Act include managing the trust land consistent with achieving the purpose of the trust, and fulfilling the trust within the trustee’s conditions of appointment, if any.⁵¹ A trustee has the general power to ‘take all action necessary for the maintenance and management of the land’, provided that the action is consistent with the Act, any conditions of appointment of

⁴⁵ *Trusts Act 1973* (Qld) s 4(1).

⁴⁶ *Land Act 1994* (Qld) s 14(2). ‘Community purposes’ are those specified in sch 1 to the Act and include, for example, cemeteries, crematoriums, cultural purposes, heritage, historical, parks, public halls, recreation, and showgrounds: s 3, sch 6 (definition of ‘community purpose’).

⁴⁷ See, eg, *Land Act 1962* (Qld) s 334(1); *Land Act 1910* (Qld) s 180(1). ‘Public purposes’ for those Acts were defined to include, among other things, charitable institutions: see *Land Act 1962* (Qld) s 5; *Land Act 1910* (Qld) s 4.

⁴⁸ *Re Queensland Temperance League* (Unreported, Supreme Court of Queensland, Williams J, 24 July 1985).

⁴⁹ *Land Act 1994* (Qld) s 451(1)–(2) provides that ‘[a]ll existing deeds of grant in trust are taken to be deeds of grant in trust under this Act for the purpose for which they were granted ... even if the purpose for which the land was granted is not a community purpose under this Act’.

⁵⁰ *Land Act 1994* (Qld) s 90.

⁵¹ *Land Act 1994* (Qld) s 46(1)(a)–(b).

the trustee and, unless otherwise approved by the Minister, the purpose for which the land was granted in trust.⁵²

2.39 Trustees' powers to deal with land granted in a deed of grant in trust are significantly restricted:

- A trustee is not authorised to 'dispose' of the trust land.⁵³
- Except in limited circumstances, a trustee may not lease all or part of the trust land (or sublease, transfer or mortgage a lease of the land) unless the trustee first obtains the Minister's written approval.⁵⁴
- A lease (or sublease) ordinarily must not be for more than 30 years, and must not contain a covenant, agreement or condition to renew the lease, convert to another form of tenure, or to buy the land.⁵⁵
- There is no general power to mortgage land granted by a deed of grant in trust under the Act, and the trustee of a deed of grant in trust issued before the commencement of the Act may not mortgage the deed of grant in trust unless the Minister has approved the mortgage.⁵⁶

2.40 Similar restrictions had also applied under earlier land legislation.⁵⁷ As such, special legislative measures were sometimes required to confer additional powers on trustees.

INCORPORATION

2.41 A number of the Acts under review also include provisions dealing with the incorporation of particular entities, including provisions to:

- vest particular property in an existing corporate entity for the organisation;
- dissolve an existing corporate entity for the organisation and reincorporate it on new terms;
- incorporate the governing body, office-holders or trustees of the organisation; or
- enable other entities of the organisation to be incorporated in a particular way at a future time.

⁵² *Land Act 1994* (Qld) s 52(1)–(3). The relevant Minister is the Minister for Natural Resources and Mines: see *Acts Interpretation Act 1954* (Qld) s 33(2); *Administrative Arrangements Order (No 2) 2013* (Qld) s 2.

⁵³ *Land Act 1994* (Qld) s 54 (No power to sell trust land).

⁵⁴ *Land Act 1994* (Qld) ss 57(1), (3)–(5), 58(1)–(2), 64.

⁵⁵ *Land Act 1994* (Qld) s 61(1)–(3).

⁵⁶ *Land Act 1994* (Qld) s 67(2), (4). Amounts raised by mortgaging trust land must be used on the trust land and for the purpose for which the trust was granted: s 67(6).

⁵⁷ See, eg, *Land Act 1962* (Qld) ss 342–343, 347, 351(1); *Land Act 1910* (Qld) s 185. See also the discussion in *Re Queensland Temperance League* (Unreported, Supreme Court of Queensland, Williams J, 24 July 1985).

2.42 In particular, a number of the Acts are special Acts having as one of their primary purposes the incorporation of particular entities.⁵⁸ Although the use of special Acts is now less frequent,⁵⁹ this approach has the advantage of providing for the specific needs of the relevant organisation, taking into account its particular nature and structure. This contrasts with the position under incorporation legislation of general application, such as the *Associations Incorporation Act 1981* (Qld).

2.43 For the most part, the Acts under review incorporate the governing body, office-holders or trustees of the association, rather than the whole membership of the association, in order to provide a centralised vehicle for the successive holding of property. For example, the *Uniting Church in Australia Act 1977* (Qld) establishes a body corporate that is to consist of certain office-holders of the synod of the church within Queensland and other persons appointed by the synod, and is to hold property vested in it on trust for the church.⁶⁰

2.44 In contrast, the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) does not merely incorporate a body corporate to hold the church's property, but incorporates all of the members of the church as a body corporate.⁶¹

2.45 Typically, the Acts declare the relevant office-holders or persons to be a corporation with perpetual succession, a common seal, and the capability in its corporate name to sue and be sued and to hold property. This reflects the powers incidental to corporations under the common law, outlined above.

2.46 A small number of the Acts under review also provide a mechanism for the incorporation of related associations at a future time.⁶² For example, the *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) provides that, in certain circumstances, a bishop, or the Corporation of the Roman Catholic Bishops of Queensland, may request the chief executive (the Director-General of the Department of Justice and Attorney-General)⁶³ to incorporate a church entity. Provided that certain formalities are met, the chief executive is to issue a certificate of incorporation for the entity, upon which the entity becomes a corporation established under the Act.⁶⁴

2.47 In addition, a number of the Acts under review concern entities that were, or had been, incorporated under the *Religious Educational and Charitable Institutions Act 1861* (Qld).⁶⁵

58 See, eg, *Anglican Church of Australia Act 1895* (Qld).

59 See generally HAJ Ford, *Principles of Company Law* (Butterworths, 4th ed, 1986) [106]; K Fletcher, 'Non-Profit Associations: The Corporate Choice in Queensland' (1995) 15 *Queensland Lawyer* 233, 234.

60 *Uniting Church in Australia Act 1977* (Qld) ss 11–13, 23–24.

61 *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) s 2(1). See also s 4.

62 *Anglican Church of Australia Act 1895* (Qld) s 8; *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) s 4; *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) ss 9–10.

63 See *Acts Interpretation Act 1954* (Qld) s 33(11)(b); *Administrative Arrangements Order (No 2) 2013* (Qld) s 2.

64 That Act was recently amended by the *Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013* (Qld) pt 5.

65 See, eg, *Chinese Temple Society Act 1964* (Qld).

The Religious Educational and Charitable Institutions Act 1861 (Qld)

2.48 The *Religious Educational and Charitable Institutions Act 1861* (Qld) was introduced to enable religious, educational and charitable institutions to establish incorporated entities ‘to hold in perpetuity land granted them as endowments’ so that, for example, ‘property would flow from one bishop to another’⁶⁶ — that is:⁶⁷

for the purpose of enabling corporations of a religious, educational, and charitable character to become registered under it so that they might, without the intervention of trustees, be able to hold their properties in the form of a perpetual corporation, thereby escaping from the trouble, danger, and expense which sometimes attends transactions when properties are held individually.

2.49 The Act achieved this by empowering the Governor to issue letters patent incorporating the office-holders of certain types of institutions, and conferred on those persons the incidents and powers typical of a corporation.

The effect of incorporation under the Act

2.50 Section 1 of the Act as passed enabled the Governor to issue letters patent declaring the following persons to be a body corporate by a given name and style:

any person or persons and their successors for ever holding any religious or secular office or preferment or exercising any religious or secular functions to which he or they shall have been duly called or appointed in accordance with the rights laws rules or usages of the community or institution to which such person or persons should belong ...

2.51 It then provided that a body corporate so constituted shall have perpetual succession and a common seal and the capability, in its corporate name, to:⁶⁸

- receive, purchase, acquire and possess lands, goods and chattels ‘to and for the uses and purposes of the said Corporation and of the religious or secular institution or body or association’ by which the persons and their successors shall be called or appointed;
- mortgage, charge or alienate such property, provided that it is not contrary to the gift, grant or dedication of the original donor or the constitution of the body or association, and that the moneys raised are applied to the same uses and purposes; and
- sue and be sued.

2.52 Accordingly, the Act did not provide for the incorporation of the whole membership of an association, but was limited to the incorporation of the association’s office-holders. This was explained in *Bailey v The Uniting Church in*

⁶⁶ Queensland, *Record of the Proceedings of the Queensland Parliament* (extracted from the third party account as published in the Courier 9 August 1861), Legislative Assembly, 8 August 1861 (C Lilley).

⁶⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 18 July 1895, 270 (TJ Byrnes, Attorney-General).

⁶⁸ *Religious Educational and Charitable Institutions Act 1861* (Qld) s 1; *Religious, Educational and Charitable Institutions Acts Amendment Act 1959* (Qld) s 2(b), (d).

Australia Property Trust (Qld) in the context of the body corporate called 'The Presbyterian Church of Queensland', which had been incorporated by letters patent under the Act in 1867. McPherson J explained that, although the name of that corporation coincided with the name of the association of Presbyterians called the Presbyterian Church of Queensland, 'it is a fallacy to assume ... that the letters patent of 1876 had the effect of incorporating the church, if what is meant by that term is the association of individuals bound together by the agreement or social compact'.⁶⁹

Both the terms of s 1 of the Act of 1861 and of the letters patent make it, in my opinion, quite clear that what is incorporated are simply the holders for the time being of and their successors in the designated office or offices of the association to which they belong, and not the members of the association as such.

2.53 Further, although the Act gave the bodies corporate under it powers to deal with property, it limited the purposes and uses for which those powers could be exercised. Thus, upon the incorporation of the office-holders of an association under the Act:⁷⁰

the body corporate fulfils its intended role, which is that of a repository of the property of the association, holding or acquiring that property, as s 1 provides, 'for the uses or purposes of the Corporation and of the religious or secular institution or body or association of persons' by which the office holders and their successors are appointed; or in other words, on trusts (which are, having regard to the title to the Act, ordinarily charitable) that accord with the purposes and constitution of the unincorporated association. (emphasis added)

Extended application and powers

2.54 Whilst the Act was originally limited to the office-holders of religious institutions and secular institutions of an educational or charitable nature,⁷¹ it was amended in 1959 to enable the incorporation of 'agricultural, horticultural, pastoral or industrial' show societies 'in view of the educational nature' of their work.⁷²

2.55 The Act was also amended to widen the powers of the bodies incorporated under it. Amendments made in 1959 enabled bodies corporate to hold real property outside the State of Queensland,⁷³ and more extensive amendments made in 1967 added a detailed list of express powers, including the powers to

⁶⁹ [1984] 1 Qd R 42, 46–7.

⁷⁰ Ibid 47, citing *Serbian Orthodox Ecclesiastic School Community 'Saint Nikolas' Queensland v Vlajslavljevic* [1970] Qd R 386, 393 (WB Campbell J).

⁷¹ In its terms, the Act referred to persons holding any 'religious or secular office' or exercising 'any religious or secular functions'. The title of the Act and its Preamble, however, more expressly referred to 'religious educational and charitable' institutions and uses.

⁷² Queensland, *Parliamentary Debates*, Legislative Assembly, 24 November 1959, 1555 (HW Noble, Minister for Health and Home Affairs). See *Religious, Educational and Charitable Institutions Acts Amendment Act 1959* (Qld) s 2(a).

⁷³ *Religious, Educational and Charitable Institutions Acts Amendment Act 1959* (Qld) s 2(c).

invest money, acquire and hold securities, and make payments towards insurance.⁷⁴

Dissolution and change of name

2.56 By amendments made in 1895, the Governor was empowered to cancel letters patent issued under the Act by order in council.⁷⁵ Upon publication of the order, the corporation would be dissolved and its property would vest, without conveyance or transfer, in the person or persons or other body corporate specified in the order, subject to the same trusts and liabilities as attached to the property immediately before the corporation was dissolved.⁷⁶

2.57 Provision was also made to enable the Governor in Council, by letters patent, to change the names of corporations incorporated under the Act.⁷⁷

Repeal and continued operation of the Act

2.58 The *Religious Educational and Charitable Institutions Act 1861* (Qld) was repealed in 1982,⁷⁸ and was replaced by the *Associations Incorporation Act 1981* (Qld).

2.59 Nevertheless, letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld) continue to be of full force and effect and to be subject to that Act as if the *Associations Incorporation Act 1981* (Qld) had not been passed.⁷⁹ However, the Minister is given the discretion to cancel any letters patent and to require the relevant association to apply for incorporation under the new Act.⁸⁰

⁷⁴ *Religious Educational and Charitable Institutions Act 1861* (Qld) s 4B, sch. Those powers applied to the extent that they were not expressly excluded or modified by the corporation's constitution, and did not authorise the corporation to deal with property contrary to the provisions of any special trusts affecting the property: s 4B. Those provisions were inserted by the *Religious Educational and Charitable Institutions Acts Amendment Act 1967* (Qld) ss 2–3.

⁷⁵ *Religious, Educational, and Charitable Institutions Act 1861 Amendment Act 1895* (Qld) s 4.

⁷⁶ *Religious, Educational, and Charitable Institutions Act 1861 Amendment Act 1895* (Qld) ss 4, 5(2)–(3).

⁷⁷ *Religious Educational and Charitable Institutions Act 1861* (Qld) ss 6A–6B, inserted by the *Religious Educational and Charitable Institutions Act and Other Acts Amendment Act 1977* (Qld) s 6.

⁷⁸ *Associations Incorporation Act 1981* (Qld) s 4(1), sch 1 (Act as passed). When that legislation was introduced into Parliament, it was said that the *Religious Educational and Charitable Institutions Act 1861* (Qld) was 'not good enough administratively to cope with today's problems': Queensland, *Parliamentary Debates*, Legislative Assembly, 7 May 1981, 1031 (SS Doumany, Minister for Justice and Attorney-General). However, the Queensland Law Reform Commission had specifically recommended that the *Religious Educational and Charitable Institutions Act 1861* (Qld) should be retained to operate alongside the new legislation, on the basis that it had worked well and fulfilled a distinct need: *Associations Incorporation Report* (1980) 10–11.

⁷⁹ *Associations Incorporation Act 1981* (Qld) s 144.

⁸⁰ *Associations Incorporation Act 1981* (Qld) s 131. In addition, a corporation constituted under the *Religious Educational and Charitable Institutions Act 1861* (Qld) may voluntarily apply to the Minister to transfer its incorporation to a company limited by guarantee under the *Corporations Act 2001* (Cth) or an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth): see *Associations Incorporation Act 1981* (Qld) pt 11A div 2 ss 106A, 106H. The relevant Minister is the Attorney-General and Minister for Justice: *Acts Interpretation Act 1954* (Qld) s 33(2); *Administrative Arrangements Order (No 2) 2013* (Qld) s 2.

The Associations Incorporation Act 1981 (Qld)

2.60 Almost all of the Acts under review predate the *Associations Incorporation Act 1981* (Qld), although some of the Acts concern entities that are now incorporated under that Act.⁸¹

2.61 The *Associations Incorporation Act 1981* (Qld) is Queensland's principal (but not the only) legislation dealing with the incorporation of voluntary, non-profit associations.⁸² As explained above, it replaced the *Religious Educational and Charitable Institutions Act 1861* (Qld).

2.62 The Act was introduced, following a report by the Queensland Law Reform Commission, to provide 'a simple system of registration allowing unincorporated associations to incorporate' and thereby to avoid the difficulties that unincorporated associations have faced, particularly in relation to property.⁸³

Eligibility for incorporation under the Act

2.63 In general, an association is eligible for incorporation under the Act if it has at least seven members and is not formed or carried on for the purpose of providing financial gain to its members.⁸⁴

2.64 Certain types of associations are, however, excluded from the Act.⁸⁵ In particular, the Act excludes associations that are incorporated under, or otherwise conferred with quasi-corporate privileges in, a special Act:⁸⁶

5 Eligibility for incorporation

(1) An association is not eligible for incorporation under this Act if the association—

...

(d) is provided for in a special Act that—

(i) incorporates—

⁸¹ See, eg, *Boonah Show Ground Act 1914* (Qld); *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld); *Scout Association of Australia Queensland Branch Act 1975* (Qld).

⁸² See, eg, *Cooperatives Act 1997* (Qld) pts 2–3 (incorporation of trading and non-trading co-operative societies); *Financial Intermediaries Act 1996* (Qld) pt 6 div 1 (incorporation of cooperative housing societies); *Hospitals Foundations Act 1982* (Qld) (incorporation of bodies to hold property for and apply property to a continuing object within or associated with hospitals); *Industrial Relations Act 1999* (Qld) ch 12 pt 2 (incorporation of employee and employer organisations).

⁸³ Queensland, *Parliamentary Debates*, Legislative Assembly, 7 May 1981, 1031 (SS Doumany, Minister for Justice and Attorney-General). See *Associations Incorporation Report* (1980).

⁸⁴ *Associations Incorporation Act 1981* (Qld) s 5(1)(a), (c). 'Association' is defined as an association, society, body or other entity formed, or carried on, for a lawful purpose: s 2, sch Dictionary. As to whether an association has the purpose of providing financial gain for its members, see s 4(1).

⁸⁵ *Associations Incorporation Act 1981* (Qld) s 5(1).

⁸⁶ *Associations Incorporation Act 1981* (Qld) s 5(1)(d). It was suggested that those organisations 'can be regulated and controlled by the statute pursuant to which they have acquired that status': *Associations Incorporation Report* (1980) 13.

- (A) the association's governing body; or
- (B) the trustees holding property for the association; or
- (ii) provides the association may sue or be sued, or hold property, in the name of the association or an officer of the association; or
- (iii) specially regulates its affairs; or

...

2.65 As such, many of the organisations that are the subject of the Acts under review would be ineligible to incorporate under the *Associations Incorporation Act 1981* (Qld).

The effect of incorporation under the Act

2.66 Incorporation under the Act is by registration and the issue of a certificate of incorporation by the chief executive.⁸⁷ This will occur only after an application has been made and approved.⁸⁸

2.67 On incorporation, property held for the association or its objects, whether on trust or otherwise, becomes property of the incorporated association, and the association's assets, rights and liabilities become those of the incorporated association.⁸⁹ Importantly, however, the Act also provides that the provisions of a trust that applied to the property immediately before incorporation continue to apply.⁹⁰

2.68 The other main incidents of incorporation under the Act include, in particular, that:⁹¹

- the incorporated association is a body corporate with perpetual succession, has a seal, and may sue and be sued in its corporate name;
- the incorporated association 'has, in the exercise of its affairs, all the powers of an individual'; and
- the rules of the incorporated association constitute the terms of a contract between the members from time to time and the incorporated association.⁹²

⁸⁷ *Associations Incorporation Act 1981* (Qld) ss 14–15. See also s 16. The chief executive is the Director-General of the Department of Justice and Attorney-General: *Acts Interpretation Act 1954* (Qld) s 33(11)(b); *Administrative Arrangements Order (No 2) 2013* (Qld) s 2.

⁸⁸ See *Associations Incorporation Act 1981* (Qld) ss 9–12.

⁸⁹ *Associations Incorporation Act 1981* (Qld) ss 22(1)(a), 23(1).

⁹⁰ *Associations Incorporation Act 1981* (Qld) s 22(1)(b).

⁹¹ See *Associations Incorporation Act 1981* (Qld) ss 21, 25(1), 71(1).

⁹² The Supreme Court has jurisdiction to adjudicate upon the validity of decisions affecting members' rights: *Associations Incorporation Act 1981* (Qld) ss 71(2), 72–73.

2.69 The Act, and accompanying regulations, also impose a number of requirements on the operation and management of associations incorporated under the Act, including requirements about:

- the association's rules (which must provide for certain specified matters and may be the association's own rules or the model rules in the legislation);⁹³
- the holding of annual general meetings of the association;⁹⁴
- the control of the association's business and operation (which must be by a management committee, the members of which are deemed to be the association's agents);⁹⁵
- record keeping, accounting, and financial reporting (including the lodgement of yearly financial statements);⁹⁶ and
- public liability insurance.⁹⁷

2.70 In many instances, failure to comply with these requirements is an offence.⁹⁸

Exemptions for religious, educational and charitable associations

2.71 As explained above, the *Associations Incorporation Act 1981* (Qld) had the effect that letters patent issued under the repealed *Religious Educational and Charitable Institutions Act 1861* (Qld) would continue unaffected, unless the Minister cancelled the letters patent and required the association to apply for incorporation under the new legislation.

2.72 Many of the provisions of the *Associations Incorporation Act 1981* (Qld) may, however, be seen as a poor fit for some of those associations.⁹⁹ It has been noted, for example, that the requirement for incorporated associations to be

⁹³ *Associations Incorporation Act 1981* (Qld) pt 5. The model rules are set out in *Associations Incorporation Regulation 1999* (Qld) s 8, sch 4.

⁹⁴ *Associations Incorporation Act 1981* (Qld) pt 6 div 1.

⁹⁵ *Associations Incorporation Act 1981* (Qld) pt 7 s 60. Among other things, pt 7 of the Act imposes requirements on the membership and eligibility for election to an association's management committee: see ss 61–61A.

⁹⁶ *Associations Incorporation Act 1981* (Qld) pt 6 div 2, s 137; *Associations Incorporation Regulation 1999* (Qld) ss 9–12, sch 5. In some circumstances, ss 59–59A of the Act also require the lodgement of an auditor's report or statement.

⁹⁷ *Associations Incorporation Act 1981* (Qld) ss 70–70A.

⁹⁸ See, eg, *Associations Incorporation Act 1981* (Qld) ss 59(4), 59A(4), 59B(4), in relation to failure to lodge an annual financial statement.

⁹⁹ For this reason, the Queensland Law Reform Commission had recommended that the *Religious Educational and Charitable Institutions Act 1861* (Qld) should be retained to 'operate conjointly' with the new legislation: *Associations Incorporation Report* (1980) 10–11. Outside that context, it has been noted in general terms that the *Associations Incorporation Act 1981* (Qld) may not meet the needs of associations 'wishing to depart from the mainstream, because of a desire for privacy, different constitutional structuring, interstate operations or other legitimate reasons': K Fletcher, 'Incorporated Associations: Cheap Incorporation — Limited Choices' (2001) 22 *Queensland Lawyer* 20, 22.

operated by a management committee might conflict with the particular organisational structure of some churches.¹⁰⁰

2.73 These concerns prompted the inclusion of an exemption provision in the *Associations Incorporation Act 1981* (Qld).¹⁰¹

2.74 Section 132 of the Act enables a regulation to be made to exempt an association from the provisions specified in the regulation. It applies to associations whose letters patent under the repealed legislation are cancelled by the Minister, and to associations that could, but for its repeal, have been incorporated under that legislation by letters patent.¹⁰²

132 Exemption from certain provisions of Act

Where—

- (a) under section 131, the Minister recalls letters patent and requires an association to apply for incorporation under this Act; or
- (b) an association applies for incorporation under this Act and that association could, but for the repeal of the repealed Acts, have been incorporated by the issue of letters patent under the repealed Acts;

a regulation may exempt the association from specified provisions of this Act.

DETERMINING WHETHER THE ACTS CAN BE REPEALED, REPLACED, UPDATED OR CONSOLIDATED

2.75 The terms of reference require the Commission to consider whether any of the Acts, or provisions of the Acts, can be repealed as obsolete, replaced by references to laws of general application,¹⁰³ otherwise simplified or modernised, or consolidated to reduce the number of separate Acts.

2.76 As explained above, the Acts under review are special Acts applying to particular organisations. In general, the Acts were designed to address particular legal difficulties that had arisen in the given context and might otherwise have been difficult (or in some cases impossible) to overcome without the aid of legislation. One consequence of this is that there is a limited opportunity for provisions in the Acts to be replaced by references to laws of general application. Some of the Acts, for example, effectively amount to a declaration or variation of a trust that continues to subsist.¹⁰⁴

2.77 Many of the Acts are also now quite old. In some instances, this means that changes have occurred to render particular provisions or references obsolete

¹⁰⁰ P MacFarlane and S Fisher, *Churches, Clergy and the Law* (Federation Press, 1996) 53. See also at 38.

¹⁰¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 31 May 1991, 8327–8 (GR Milliner, Minister for Justice and Corrective Services).

¹⁰² *Associations Incorporation Act 1981* (Qld) s 132, inserted by the *Justice Legislation (Miscellaneous Amendments) Act 1991* (Qld) s 3, sch.

¹⁰³ Such as the *Associations Incorporation Act 1981* (Qld) or the *Trusts Act 1973* (Qld).

¹⁰⁴ See, eg, *Uniting Church in Australia Act 1977* (Qld).

or out of date.¹⁰⁵ In other instances, the provisions of the Acts remain relevant despite their age. In either case, determining whether the Acts or any of their provisions are obsolete depends to a large extent on questions of fact. That task is made more difficult by the lengthy and sometimes very complicated factual history between the introduction of the Acts and present day.

2.78 The question whether any of the Acts or their provisions can be repealed as obsolete has also been considered in light of the provisions of the *Acts Interpretation Act 1954* (Qld).

The effect of the *Acts Interpretation Act 1954* (Qld)

2.79 Part 6 of the *Acts Interpretation Act 1954* (Qld) deals with the amendment and repeal of Acts. Of particular relevance in this review are sections 20 and 20A of that Act. Relevantly, those sections provide that:

- the repeal of an Act (including a provision of an Act) does not ‘affect the previous operation of the Act or anything suffered, done or begun under the Act’;¹⁰⁶
- the repeal of an Act (including a provision of an Act) does not ‘affect a right, privilege or liability acquired, accrued or incurred under the Act’;¹⁰⁷
- if an Act declares a thing for a saving or transitional purpose (whether or not the Act is expressed to be made for a purpose of that type), the declaratory effect of the Act does not end merely because of the repeal of the Act;¹⁰⁸ and
- if an Act validates a thing that may otherwise be invalid, the validating effect of the Act does not end merely because of the repeal of the Act.¹⁰⁹

2.80 Additionally, it is possible to repeal an Act or provision, without ending its effect, by declaring it to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. Section 20A(3) provides:¹¹⁰

- (3) If an Act (the **savings law**) declares an Act (the **declared law**) to be a law to which this section applies—
 - (a) the effect of the declared law does not end merely because of its repeal; and
 - (b) the effect of the savings law does not end merely because of its repeal.

¹⁰⁵ For example, references to another statute that has since been repealed and replaced.

¹⁰⁶ *Acts Interpretation Act 1954* (Qld) s 20(2)(b).

¹⁰⁷ *Acts Interpretation Act 1954* (Qld) s 20(2)(c).

¹⁰⁸ *Acts Interpretation Act 1954* (Qld) s 20A(2)(a).

¹⁰⁹ *Acts Interpretation Act 1954* (Qld) s 20A(2)(b).

¹¹⁰ In that section, a reference to an ‘Act’ includes a provision of an Act: *Acts Interpretation Act 1954* (Qld) s 20A(1).

The Commission's general approach

2.81 In light of these matters, the Commission has adopted the following general approach to the review.

Repeal of obsolete provisions

2.82 Where it is clear that the provision (or Act) has achieved its intended purpose and has no further role to perform, the provision should be repealed, relying on the automatic saving of the previous operation of the provision by section 20(2) of the *Acts Interpretation Act 1954* (Qld). For example, many of the Acts include provisions to vest property in particular entities, which took effect automatically upon the commencement of the provision.

2.83 Where the provision (or Act) appears to have no further role to perform but it is not possible on the available facts to be absolutely certain that the provision is exhausted, the provision should be repealed and its future effect preserved, out of an abundance of caution, by declaring it to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. An example of this is where the Act relates to particular property and, because of subsequent events, it appears extremely unlikely, but cannot be confirmed, that there was or is no longer any such property to which the Act is capable of applying.¹¹¹

2.84 There may also be circumstances where, although a particular provision could technically be repealed, its retention adds to the overall comprehensibility of the Act and its relevant history. In those circumstances, the Commission has not recommended the repeal of the provision.

Powers granted to entities

2.85 Where the Acts include provisions granting powers to a particular entity, for example, to sell, lease or mortgage property vested in the entity, and those provisions have a continuing future application, the provisions should generally be retained.

2.86 In particular, where the relevant property is, or may include, land granted to the entity by a deed of grant in trust, it is not possible to rely on the powers under the *Trusts Act 1973* (Qld) because that Act does not apply to deeds of grant in trust.¹¹² Additionally, many of the Acts in the review that confer powers limit those powers in certain ways, reflecting the particular organisational structure or circumstances of the relevant organisation. Those limitations would not be covered by provisions in legislation of more general application like the *Trusts Act 1973* (Qld).

2.87 Further, retention of the provisions dealing with powers, where the Acts as a whole are to be retained, would ensure greater certainty and clarity for the organisation involved.

¹¹¹ See, eg, *Queensland Congregational Union Act 1967* (Qld); *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld).

¹¹² See *Land Act 1994* (Qld) s 90. See [2.34] ff above.

Incorporation of entities

2.88 Similarly, where the Acts make provision for the incorporation of particular entities, and those provisions have a continuing future application, the provisions should generally be retained. In particular, some of the Acts establish a mechanism for the incorporation of other entities in the future which is tailor-made to the needs and internal structure of the relevant organisation. Related or incidental provisions should also generally be preserved, where the Acts as a whole are to be retained, to ensure the comprehensibility and usability of the Acts.

Provisions recognising the internal rules or constitution of the organisation

2.89 In order to reflect changes that might have occurred over time, provisions in the Acts that refer to the internal rules or constitution of the religious or community organisation should, in general and where relevant, be amended to refer to those rules 'as amended from time to time'.¹¹³ For example, where the Act gives legal force to the 'basis of union' of a church as set out in the Act in its original form, the provisions should be updated to reflect the fact (and possibility) of subsequent amendment or revision of the basis of union by the church.

Consolidation of separate Acts

2.90 Finally, where two or more Acts concern the same religious or community organisation and deal with a common subject matter and it is otherwise appropriate to do so, the Acts should be consolidated into a single enactment. An example of this is where both Acts are quite short and their provisions supplement one another.¹¹⁴

¹¹³ *Acts Interpretation Act 1954* (Qld) sch 1 defines 'amend', for an instrument or provision of an instrument, to include 'alter or vary'. That definition is sufficient to apply to revisions to the internal rules or constitution of the organisation.

¹¹⁴ See, eg, *Anglican Church of Australia Constitution Act 1961* (Qld) and *Anglican Church of Australia Act 1977* (Qld).

Chapter 3

Anglican Church of Australia

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INTRODUCTION

3.1 The terms of reference require the Commission to review the following Acts relating to the Anglican Church of Australia:

- *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld);
- *Anglican Church of Australia Act 1895* (Qld);
- *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld);

- *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld);
- *All Saints Church Lands Act 1924* (Qld);
- *All Saints Church Lands Act 1960* (Qld);
- *Anglican Church of Australia Constitution Act 1961* (Qld); and
- *Anglican Church of Australia Act 1977* (Qld).

3.2 In making its recommendations about these Acts, the Commission has sought the input of the following persons who represent the Anglican Church Dioceses of Brisbane, Rockhampton and North Queensland:

- the Archbishop of Brisbane;
- the Bishop of Rockhampton; and
- the Bishop of North Queensland.

3.3 The Commission also consulted with the trustees of the All Saints' Church, Wickham Terrace in relation to the *All Saints Church Lands Act 1924* (Qld) and the *All Saints Church Lands Act 1960* (Qld).

ANGLICAN CHURCH OF AUSTRALIA (DIOCESE OF BRISBANE) PROPERTY ACT 1889 (QLD)

3.4 The Preamble to the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) recites that, on 18 June 1868, the Bishop, clergy and laity of the Church of England (then called the Church of England and Ireland) resident in the Diocese of Brisbane adopted a constitution for the management and good government of the Church in the Diocese. The constitution made provision for associating together the members of the Church by voluntary compact as a Branch of the Church of England and for establishing the Synod of the Branch of the Church of England, in the Diocese of Brisbane, in the Colony of Queensland¹ as the governing body for the management of the affairs of the Church in the Diocese.

3.5 The Preamble also recites that the Corporation of the Synod of the Diocese of Brisbane (the 'original Corporation') was constituted by letters patent, dated 2 November 1870, issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld). Under that Act, the original Corporation acquired certain rights and powers, including powers to mortgage, charge, or alienate lands, 'provided such a mortgage charge or alienation be not contrary to the gift grant or dedication of the original donor', and that the moneys to be raised thereby should be applied to the same uses and purposes of the Corporation and the Church.²

¹ At that time under the name 'The Synod of the Branch of the United Church of England and Ireland, in the Diocese of Brisbane, in the colony of Queensland'.

² *Religious Educational and Charitable Institutions Act 1861* (Qld) s 1.

3.6 The original Corporation thereafter acquired various parcels of land upon the trusts declared in a model trust deed,³ and executed mortgage securities over the lands to secure the repayment of moneys advanced and lent to the Synod. Subsequently, however, doubts had arisen over the validity of those securities, due to the apparent omission of a power to mortgage in the model trust deed.⁴

3.7 The *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) was enacted, at the request of the Synod, to address that and other difficulties.⁵ The Act commenced on 5 November 1889.

3.8 The Act has four substantive provisions — sections 3, 4, 9 and 11. If none of those provisions needs to be retained, that would, in fact, enable the whole Act to be repealed.

Section 3: Property vested in corporation under model trust deed to be held freed from trusts thereof

3.9 Section 3 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) declares that any property which at the time of the passing of the Act is vested in or held by the original Corporation under the model trust deed is deemed to be so vested and held completely freed and discharged from the trusts of the model trust deed.

3.10 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 3 could now be repealed.

The Commission's view

3.11 Given that the vesting of property in the original Corporation (and the release of the trusts that had previously attached to the property) occurred at the time the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) was passed, section 3 of the Act serves no further purpose and should be repealed.⁶ This would not affect the previous operation of section 3 or end its declaratory effect.⁷

³ The 'model trust deed' is defined in s 1 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) to mean a certain indenture dated 7 March 1871, purporting to be made between the Right Reverend William Tyrrell, Doctor of Divinity, Lord Bishop of Newcastle, of the one part, and the corporation of the other part, adopted by the synod on 13 July 1870, and registered in the office of the registrar general in Brisbane as No 225, book 6.

⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 20 September 1889, 1735 (WH Groom).

⁵ Legislative Assembly Select Committee, Parliament of Queensland, *Church of England (Diocese of Brisbane) Property Bill* (1889) 817 ff.

⁶ The Commission also notes that, in any event, the original Corporation was later dissolved by the *Anglican Church of Australia Act 1895* (Qld) and was reconstituted under that Act as a new Corporation of the same name: *Anglican Church of Australia Act 1895* (Qld) s 3. The *Anglican Church of Australia Act 1895* (Qld) further provided that all property that was vested in the original Corporation became vested in the new Corporation, subject however to the same trusts, conditions, charges and encumbrances as the property was subject to immediately before it vested: s 4.

⁷ *Acts Interpretation Act 1954* (Qld) ss 20(2)(b), 20A(2)(a).

Section 4: Securities given over land held under model trust deed declared to be valid

3.12 Section 4 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) declares the validity of any securities that had been given previously over land vested in the original Corporation upon the trusts under the model trust deed.

3.13 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 4 could now be repealed.

The Commission's view

3.14 Given that section 4 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) was enacted to confirm the validity of securities that had been given previously over the relevant land up until the time the Act was passed, the provision has no further purpose and should be repealed. This would not affect the previous operation of section 4 or end its validating effect.⁸

Section 9: Provision as to the *Religious Educational and Charitable Institutions Act 1861* (Qld)

3.15 The *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld), as passed, had included provisions conferring 'powers and authorities' on the original Corporation (which was established by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld)), the Synod and various persons in relation to Church property that fell within the ambit of the Act.⁹

3.16 Section 9 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) was ancillary to those provisions. It provides that the powers and authorities conferred by the Act on the original Corporation are in addition to the powers and authorities created by the *Religious Educational and Charitable Institutions Act 1861* (Qld) but that, in the case of conflict, the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) prevails.

3.17 It appears, however, that subsequent legislative developments have rendered section 9 obsolete. In 1895, the *Anglican Church of Australia Act 1895* (Qld) dissolved the original Corporation and constituted a new Corporation of the same name. The 1895 Act also consequentially repealed the provisions of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) that conferred 'powers and authorities' on the original Corporation and substantially re-enacted them, although in a form that applied in relation to any corporation (including the new Corporation) constituted under the 1895 Act (but not to a body corporate established under the *Religious Educational and Charitable Institutions Act 1861* (Qld), as was previously the case in relation to the original Corporation).¹⁰

⁸ *Acts Interpretation Act 1954* (Qld) ss 20(2)(b), (4)(d), 20A(2)(b).

⁹ *Church of England (Diocese of Brisbane) Property Act 1889* (Qld) ss 5–8 (Act as passed).

¹⁰ *Anglican Church of Australia Act 1895* (Qld) ss 10–13.

3.18 The Anglican Church in the Diocese of Brisbane has informed the Commission that it considers that section 9 of the Act could now be repealed.

The Commission's view

3.19 In light of the legislative changes made by the *Anglican Church of Australia Act 1895* (Qld) and described above, section 9 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) serves no further purpose and should be repealed. This would not affect its previous operation.¹¹

Section 11: How proceeds of sale to be applied

3.20 An additional, and distinct, object of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) was to amend the *Fortitude Valley Parsonage Land Sale Act 1877* (Qld) to vary the purposes for which the trustees of land at Fortitude Valley (being described as suburban allotment 249, in the Parish of North Brisbane and County of Stanley), on which the original parsonage of the Trinity Church was built, were to apply the proceeds of any sale of that land.¹²

3.21 Section 2 of the *Fortitude Valley Parsonage Land Sale Act 1877* (Qld) had authorised the trustees to use the proceeds of such sale only for the purposes of paying the reasonable expenses of the sale and for building a new parsonage on another allotment of land within the same parish.

3.22 The Parliamentary Debates at the time note that, when the Anglican Church of Australia (Diocese of Brisbane) Property Bill 1889 (Qld) was introduced, the Fortitude Valley land had not been sold, and it was anticipated that, if sold at auction, the amount realised from the sale would probably be too large to spend upon the erection of a parsonage.¹³

3.23 Section 11 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) therefore made provision that, after the parsonage had been erected, the proceeds should be devoted to building a school in connection with the Church, and the balance of any remaining proceeds be transferred to the original Corporation to be used, as directed by the Bishop in Council, for any suitable purpose in connection with the parish of Fortitude Valley.

3.24 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 11 could now be repealed.

The Commission's view

3.25 More than 120 years has elapsed since the enactment of section 11 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld). The submission of the Anglican Church in the Diocese of Brisbane would suggest that

¹¹ *Acts Interpretation Act 1954* (Qld) s 20(2)(b).

¹² The *Fortitude Valley Parsonage Land Sale Act 1877* (Qld) was repealed by the *Acts Repeal Act 1973* (Qld) s 2, sch.

¹³ Queensland, *Parliamentary Debates*, Legislative Assembly, 20 September 1889, 1735 (WH Groom).

section 11 is a spent provision and serves no further purpose. However, because the extent to which that provision is obsolete depends on historical factual matters, the Commission considers that it would be prudent for section 11 to be repealed, but declared to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. This would ensure that the effect of section 11 does not end merely because of its repeal.

Whether the Act can be repealed in its entirety

3.26 As mentioned above, the Commission has expressed the view that sections 3, 4, 9 and 11 of the *Anglican Church of Australia (Diocese of Brisbane) Property Act 1889* (Qld) need not be retained, and that those provisions should be repealed. As those provisions are the only substantive provisions in the Act, the Act should be repealed in its entirety. The repeal of the Act should be made subject to a declaration that section 11 is a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies.

ANGLICAN CHURCH OF AUSTRALIA ACT 1895 (QLD)

3.27 The *Anglican Church of Australia Act 1895* (Qld) was originally enacted as the *Church of England Act 1895* (Qld). The name of the Act was changed by the *Anglican Church of Australia Act 1977* (Qld).¹⁴ The Act commenced on 30 October 1895.

3.28 One of the purposes of the Act, as stated in its long title, is to ‘make better provision for the management of the property and affairs of the Anglican Church of Australia in Queensland’.

3.29 Amongst other things, the Act makes provision for the incorporation of a new Corporation of the Synod of the Diocese of Brisbane, and the dissolution of the body corporate constituted by the same name under the *Religious Educational and Charitable Institutions Act 1861* (Qld).¹⁵ A number of provisions facilitate this change by, for example, vesting property of the original Corporation in the new Corporation, substituting the name of the new Corporation in legal and ecclesiastical documents and by providing for the continuance of proceedings.¹⁶

3.30 The Act also establishes the Corporation of the Synod of the Diocese of Rockhampton, and provides generally for other synods to be incorporated under the provisions of the Act.¹⁷

3.31 The Act further gives trustees the power to transfer property to a synod that has been incorporated under the Act.¹⁸

¹⁴ *Anglican Church of Australia Act 1977* (Qld) s 4, sch 1.

¹⁵ *Anglican Church of Australia Act 1895* (Qld) s 3.

¹⁶ *Anglican Church of Australia Act 1895* (Qld) ss 4–6.

¹⁷ *Anglican Church of Australia Act 1895* (Qld) ss 7–8.

¹⁸ *Anglican Church of Australia Act 1895* (Qld) s 10.

3.32 It also gives powers to any synod incorporated under the Act to deal with property vested in or acquired by the synod. It states, in section 13, that property vested in any such synod may be 'held and managed, and may be mortgaged, charged, alienated, or otherwise dealt with and disposed of' in such manner as the synod directs, and all property so vested shall be subject to the acts, canons, and resolutions of the synod. In addition, all moneys from the sale, mortgage, or lease of such property must be applied for the benefit of the Church. Section 13 also requires, however, that property that is held by a synod subject to any express trusts created by the original donor, or contained in any Act of Parliament in which the property is specifically mentioned, must be held, managed and dealt with by the synod in conformity with those trusts. The effect of section 13 in this regard is ameliorated by the provisions of the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld), which is discussed below.

3.33 The other purpose of the Act, stated in its Preamble, is to 'facilitate proof ... of consensual compacts, acts, canons and resolutions made or passed by the bishops, clergy and laity of the said church'. Accordingly, the Act includes provisions in relation to the recording and evidence of various documents mentioned in the Act.¹⁹

Section 2: Proof of consensual compact of the church in the Diocese of Brisbane

3.34 Section 2 of the *Anglican Church of Australia Act 1895* (Qld) deals with the constitution (or 'consensual compact') originally agreed to, on 18 June 1868, for the 'management and good government' of the Anglican Church of Australia in the Diocese of Brisbane.²⁰ The Preamble to the Act recites that the original instrument containing that consensual compact has been lost or destroyed. One of the objects of the *Anglican Church of Australia Act 1895* (Qld) was 'the replacement by a statute' of that lost or destroyed consensual compact.²¹

3.35 When the Act was passed, the text of the constitution was set out in Schedule 1 of the Act. The constitution has, however, been amended from time to time since the passing of the Act,²² and Schedule 1 is no longer reprinted in the Act.

3.36 Section 2, nevertheless, continues to refer to the constitution in Schedule 1, and explains, by way of a footnote, that the schedule is not reprinted. It provides:

¹⁹ *Anglican Church of Australia Act 1895* (Qld) ss 2, 14–16.

²⁰ *Anglican Church of Australia Act 1895* (Qld) Preamble, s 2.

²¹ Queensland, *Parliamentary Debates*, Legislative Assembly, 24 September 1895, 1027 (TJ Byrnes, Attorney-General).

²² See now The Corporation of the Synod of the Diocese of Brisbane, *Constitution and Canons of the Diocese of Brisbane* (2nd ed, 2003 reprint), AAB-1-2004, available at <http://anglicanbrisbane.org.au/files/2013/09/Constitution-and-Canons-6-September-2013-with-bookmarks.pdf>.

2 Proof of consensual compact of the church in the Diocese of Brisbane

The constitution contained in schedule 1¹ shall be deemed and taken to be a true copy of the consensual compact firstly hereinbefore recited, and a copy of this Act printed by the government printer shall be received as sufficient evidence of the contents of such consensual compact, and of the same having been duly made by the bishop, clergy, and laity of the church in the Diocese of Brisbane.

1 This schedule is not reprinted. The text of the constitution contained in the schedule has been amended by appropriate church authorities and is now out of date. (emphasis added)

3.37 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 2 could be repealed if the amending Act declares it to be a provision to which section 20A of the *Acts Interpretation Act 1954* (Qld) applies.

The Commission's view

3.38 Given that the text of the original constitution is no longer included in the *Anglican Church of Australia Act 1895* (Qld), the Commission is of the view that it would be appropriate, in the interests of modernising and updating the Act, to repeal section 2 of the Act. The provision should also be declared to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies, to ensure that the effect of the provision does not end merely because of its repeal.

Section 4: Vesting of property in new corporation

3.39 Section 4 of the Act provides for the vesting of property of the original Corporation in the new Corporation 'from and immediately after the passing of this Act', subject however to the trusts and conditions that applied to the property immediately before the vesting.

3.40 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 4 could now be repealed.

The Commission's view

3.41 Because all the property that was vested in the original Corporation became vested in the new Corporation when the *Anglican Church of Australia Act 1895* (Qld) commenced on 30 October 1895, section 4 serves no further purpose and should be repealed. This would not disturb the vesting of the property that occurred on that date.²³

Section 5: Substitution of name of new corporation

3.42 Section 5 of the *Anglican Church of Australia Act 1895* (Qld) deals with the substitution of the name of the new Corporation in place of the name of the original

²³ *Acts Interpretation Act 1954* (Qld) s 20(2)(b).

Corporation in certain documents and instruments. It provides that, 'immediately upon the passing of this Act', all documents and instruments in existence at the time of the passing of the Act relating to property, affecting any rights or interests in property, or giving a right to or against any person in which the name of the original Corporation appears, shall be read and construed as if the name of the new Corporation appeared instead.

3.43 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 5 could now be repealed.

The Commission's view

3.44 The Commission is of the view that section 5 should be repealed as the substitution of the name of the new Corporation under that provision occurred immediately upon the passing of the Act. This would not affect the previous operation of section 5 or end its savings or transitional effect.²⁴

Section 6: Continuance of proceedings

3.45 Section 6 provides for legal proceedings commenced by or against the original Corporation before the passing of the Act to be dealt with as if they had been commenced by or against the new Corporation.

3.46 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, section 6 could now be repealed.

The Commission's view

3.47 There is very little, if any, possibility that there are any legal proceedings that were commenced by or against the original Corporation before the Act commenced on 30 October 1895, and that have not been finalised. In those circumstances, it is very unlikely that section 6 serves any further purpose. Section 6 should, therefore, be repealed. This would not affect the previous operation of section 6 or end its savings or transitional effect.²⁵

ANGLICAN CHURCH OF AUSTRALIA ACT 1895 AMENDMENT ACT 1901 (QLD)

3.48 The *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld) was originally enacted as the *Church of England Act of 1895 Amendment Act of 1901* (Qld). The name of the Act was changed by the *Anglican Church of Australia Act 1977* (Qld).²⁶

²⁴ *Acts Interpretation Act 1954* (Qld) ss 20(2)(b), (4)(d), 20A(2)(a).

²⁵ *Acts Interpretation Act 1954* (Qld) ss 20(2)(b), (4)(d), 20A(2)(a).

²⁶ *Anglican Church of Australia Act 1977* (Qld) s 4, sch 1.

3.49 As mentioned above, section 13 of the *Anglican Church of Australia Act 1895* (Qld) requires that all property that is vested in or acquired by any synod that is incorporated under the Act should, so far as the property is subject to any express trusts created by the original donor or contained in any Act of Parliament in which the property is specifically mentioned, be held, managed and dealt with by the synod in conformity with those trusts.

3.50 In the Diocese of Brisbane, there were various pieces of land, vested in the new Corporation of the Synod of the Diocese of Brisbane and held upon trust for 'Church of England purposes, and for no other purposes whatsoever'.²⁷ However, section 13 of the Act did not confer power on the Synod to deal by way of sale, mortgage or lease with any land that it held subject to such purposes.²⁸

3.51 To overcome this limitation, the Synod asked the Parliament to pass legislation that would give synods the general power to deal with Church land held upon trust for 'Church of England purposes, and for no other purposes whatsoever' as the need arose, without the necessity to approach the Parliament on each occasion.²⁹

3.52 Subsequently, the Parliament enacted the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld).

3.53 Section 2(1) of the Act declares that it is, and has always been, lawful for any synod incorporated under the 1895 Act to sell, mortgage and lease any lands vested in the synod upon trust for 'Anglican Church of Australia purposes, and for no other purposes whatsoever', and in such manner as the synod (or any committee to which the synod may have delegated its functions in that behalf) directs.

3.54 Section 3 declares that it is, and has always been, lawful for any moneys arising from such sales, mortgages, or leases, to be applied for such Anglican Church of Australia purposes as the synod (or any committee to which the synod may have delegated its functions in that behalf) directs, and for no other purposes whatsoever.

Section 2(2) and Schedule: South Brisbane lands

3.55 Section 2(2) of the Act provides that 'nothing in [section 2] shall be construed to confer upon any synod any further or other power to sell the lands specified in the schedule than could have been exercised by [the] synod if this Act had not been passed'. The land specified in the Schedule to the Act is described as:

That piece of land in the county of Stanley, parish of South Brisbane and city of Brisbane, containing by admeasurement 1ac, 3rd, 8p more or less, and known as allotments 1, 2, 3, 16, 17, 18, 19, and 20 of section 14.

²⁷ Legislative Council Select Committee, Parliament of Queensland, *Church of England Act of 1895 Amendment Bill* (1900) 1943 (evidence of LE Groom).

²⁸ Ibid.

²⁹ Ibid 1943–5.

3.56 The effect of section 2(2) is to except that particular piece of land from the scope of the 1901 amending Act. This proviso was included in the Act to take account of an objection that had been made by members of the Church of England in South Brisbane to including in the Act 'lands held for Church of England purposes in South Brisbane'.³⁰

3.57 The Anglican Church in the Diocese of Brisbane has informed the Commission that the land described in the Schedule to the Act is no longer vested in the Corporation of the Synod of the Diocese of Brisbane.³¹ As a consequence, it considered that section 2(2) and the Schedule to the Act could be repealed.

The Commission's view

3.58 Since the land described in the Schedule to the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld) is no longer vested in the Corporation of the Synod of the Diocese of Brisbane, there is no need to retain either section 2(2) or the Schedule to the Act. Those provisions of the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld) should therefore be repealed.

Relocation of the provisions of the 1901 amending Act to the 1895 Act

3.59 Although the *Anglican Church of Australia Act 1895* (Qld) is amended by the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld), those Acts have not been consolidated into one Act.

3.60 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, the remaining provisions of the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld) could be relocated to the *Anglican Church of Australia Act 1895* (Qld).

The Commission's view

3.61 The separation within two different Acts of the general legislative provisions dealing with the property and powers of the various Anglican Church Synods in Queensland is not ideal from a modern drafting perspective. To simplify matters and to improve the accessibility of the legislation, the provisions of the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld) that continue to be needed should be relocated so that, instead of being contained in a separate amending Act, they are included in the body of the *Anglican Church of Australia Act 1895* (Qld). This will enable the *Anglican Church of Australia Act 1895 Amendment Act 1901* (Qld) to be repealed.

³⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 16 December 1900, 2535 (A Rutledge, Attorney-General).

³¹ Information provided by the Anglican Church in the Diocese of Brisbane, 28 October 2013.

BISHOPSBOURNE ESTATE AND SEE ENDOWMENT TRUSTS ACT 1898 (QLD)

3.62 The *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld) concerns two trusts of which the Corporation of the Synod of the Diocese of Brisbane³² is trustee:³³

- the Bishopsbourne Estate Trust (which concerned the lands, known as the 'Bishopsbourne Estate', on which the original Bishopsbourne residence was erected, held on trust for the use, benefit and enjoyment of the Bishop of Brisbane and the Bishop's successors); and
- the See Endowment Fund (which consisted of funds, to be invested with the income to be paid to the Bishop for the time being or as the Bishop might from time to time direct, and with power to sell or transfer the investments with the proceeds to be reinvested in like manner and held and applied upon the same trusts).

3.63 The Act was enacted at the request of the Synod of the Diocese of Brisbane.³⁴ Its object was to consolidate the Bishopsbourne Estate Trust and the See Endowment Fund, to enable the Corporation of the Synod of the Diocese of Brisbane to apply money from the See Endowment Fund to repay the money owing on a mortgage of the Bishopsbourne Estate, and to pay other expenses that had been incurred in the maintenance and repair of the Bishopsbourne residence.³⁵

3.64 Accordingly, section 2(1) of the Act empowered the Corporation to apply the See Endowment Fund and any money arising from the calling in, sale or disposal of any of the Fund's investments for the following purposes:

- (a) in the payment of the costs of and attending the applying for, obtaining, and passing of the Act;
- (b) in or towards the payment of any moneys owing on the mortgage of the Bishopsbourne Estate;
- (c) in or towards the payment and discharge of the sum of £279 or other moneys that had been expended or liabilities that had been incurred by the Corporation in the necessary maintenance and repair of the buildings and improvements erected and made upon the Bishopsbourne Estate; and

³² The original Corporation of that name was incorporated by letters patent in 1870 under the *Religious Educational and Charitable Institutions Act 1861* (Qld). It was dissolved, and replaced by the new Corporation of that name by the *Anglican Church of Australia Act 1895* (Qld): see [3.29] above.

³³ Legislative Council Select Committee, Parliament of Queensland, *Bishopsbourne Estate Bill* (1900) 1953 (evidence of LE Groom); *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld) Preamble paras 1–5, s 1 (definitions of 'Bishopsbourne Estate' and 'See Endowment Fund').

³⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 16 December 1898, 1566 (AH Barlow).

³⁵ *Ibid*; Legislative Council Select Committee, Parliament of Queensland, *Bishopsbourne Estate Bill* (1900) 1953 (evidence of LE Groom).

- (d) in the payment of any moneys that may from time to time be required for the maintenance, conservation, insurance or repair of the buildings or improvements upon the Bishopsbourne Estate.

3.65 Section 2(2) contained the proviso that the Corporation was required to hold the balance of any money that was not applied for the purposes listed in section 2(1) on the original trusts of the Fund.

3.66 At the request of the Synod, a further Act was passed in 1900 to enable the Bishopsbourne Estate to be sold at some time in the future. This was considered necessary because neither the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld), nor the trust on which the Bishopsbourne Estate was held, contained a power of sale.³⁶

3.67 The *Bishopsbourne Estate Act 1900* (Qld) enabled the Corporation, with the consent of the Synod, to sell, mortgage or lease all or any part of the Bishopsbourne Estate.³⁷ It also provided for the proceeds arising from the sale or mortgage to be used to purchase other land in a more convenient locality and to build a new residence for the Bishop on it, or to be invested and held by the Corporation upon the same trusts and subject to the powers and provisions of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld) concerning the See Endowment Fund.³⁸

3.68 The 1900 Act also defined the term 'Bishopsbourne Estate' to include any land purchased for a new Bishop's residence out of money arising from a sale or mortgage authorised under that Act.³⁹ That definition applied both to the 1900 Act and to the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld).

3.69 The 1900 Act was repealed in 1995, but continues to have effect by virtue of the application of section 20A of the *Acts Interpretation Act 1954* (Qld).⁴⁰

Section 2: Power for the Corporation to apply the See Endowment Fund for particular purposes

3.70 Title searches undertaken by the Commission show that the Corporation of the Synod of the Diocese of Brisbane (as trustee) is the registered owner of part of the original Bishopsbourne Estate (although other parts of that land are now held in the names of unrelated third parties).⁴¹

³⁶ Legislative Council Select Committee, Parliament of Queensland, *Bishopsbourne Estate Bill* (1900) 1953–4 (evidence of LE Groom).

³⁷ *Bishopsbourne Estate Act 1900* (Qld) (repealed) s 3. That Act does not form part of this review.

³⁸ *Bishopsbourne Estate Act 1900* (Qld) (repealed) ss 4–5. Section 5 of that Act also required the income and profits of the Bishopsbourne Estate, until its sale, to be paid to the Bishop or as the Bishop may direct from time to time.

³⁹ *Bishopsbourne Estate Act 1900* (Qld) (repealed) s 2.

⁴⁰ *Statute Law Revision Act 1995* (Qld) s 5(1), (3), schs 6, 9.

⁴¹ Department of Natural Resources and Mines (Qld), Current Title Search (Title Reference 13005119). The current real property description for that land is lot 55 on Registered Plan 53733 and lot 2 on Registered Plan 83847, County of Stanley, Parish of Enoggera, City of Brisbane.

3.71 Although the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld), when it was first passed, applied to the original Bishopsbourne Estate only, its application was extended by the 1900 Act to any subsequent lands purchased for the purpose of providing a residence for the Bishop in the Diocese of Brisbane, as has occurred from time to time. The original Bishopsbourne residence was built in the 1860s at Milton, and remained the official residence of the Bishops, and later Archbishops, of the Diocese until the early 1960s, upon the purchase of a second Bishopsbourne at Hamilton.⁴² The second Bishopsbourne was subsequently sold, following the acquisition of a new Episcopal residence in another location.⁴³

3.72 Because of the extended meaning given to the term ‘Bishopsbourne Estate’, section 2(1)(d) and (2) of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld) is capable of having a continuing, future application in terms of the purposes for which the See Endowment Fund is to be applied.

3.73 However, section 2(1)(a)–(c) of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld) deals with past events, namely, the application of moneys in the payment of, respectively, expenses associated with the passing of that Act, the repayment of the money then owing under a mortgage of the original Bishopsbourne Estate,⁴⁴ and the sum of £279 together with other moneys that had been previously expended on the original Bishopsbourne Estate.

3.74 The Anglican Church in the Diocese of Brisbane has informed the Commission that, in its view, there is no need to retain section 2(1)(a)–(c), and that those provisions could be repealed. It also submitted that section 2(1)(d) and (2) of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld) could be repealed on the basis that the purposes of the trusts on which the See Endowment Fund and Old Bishopsbourne are held under the Act are no longer ‘actively pursued’ by the Diocese, as the residence of the Archbishop is provided for out of general Diocesan funds and the assets of Old Bishopsbourne and the See Endowment are not used for that purpose.

The Commission’s view

3.75 Section 2(1)(a)–(c) of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld), being provisions that deal with the payment of particular past expenses and liabilities associated with the original Bishopsbourne Estate, no longer serve any purpose and should be repealed.

3.76 In relation to the submission of the Anglican Church in the Diocese of Brisbane as to the repeal of section 2(1)(d) and (2) of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld), the Commission is of the view that an

⁴² Department of Environment and Heritage (Qld), *Old Bishopsbourne* (15 March 2013) *Queensland Heritage Register* <<https://heritage-register.ehp.qld.gov.au/placeDetail.html?siteId=15029>>. Old Bishopsbourne now forms part of the St Francis’ Theological College, and is registered as a State Heritage place under the *Queensland Heritage Act 1992* (Qld).

⁴³ Information provided by the Anglican Church in the Diocese of Brisbane, 28 October 2013.

⁴⁴ A title search of the relevant land reveals that the mortgage, produced on 29 March 1889 and registered on 8 July 1889, from the Corporation of the Synod of the Diocese of Brisbane to Edward North Buxton for £3500 and registered as number 203602, was released on 22 November 1902: Department of Natural Resources and Mines (Qld), Certificate of Title vol 5 folio 197 (Title Reference 10005197).

amendment of the kind sought by the Diocese would involve substantive policy decisions (as to whether, and how, to vary or extinguish the existing trusts that apply in respect of the Bishopsbourne Estate and the See Endowment Fund, including under section 2(1)(d) and (2) of the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld)), which are not within the scope of this review. Accordingly, the Commission makes no recommendation about that matter.

ALL SAINTS CHURCH LANDS ACT 1924 (QLD)

3.77 The Preamble to the *All Saints Church Lands Act 1924* (Qld)⁴⁵ (the ‘1924 Act’) recites that, by a deed of grant from the Crown, certain land was granted to particular persons and their survivors ‘for ever upon trust for the appropriation thereof for Church of England purposes and for no other purposes whatsoever’. It goes on to recite that, from time to time, the Governor in Council had appointed replacement trustees and that, accordingly, the land stood at that time vested in the names of certain persons as trustees.

3.78 The object of the 1924 Act (as stated in the long title and Preamble to the Act) was to give the trustees power to mortgage the land for particular purposes, and to ensure that those powers would be exercised with the oversight of the Synod of the branch of the Anglican Church in the Diocese of Brisbane, which was ‘the proper authority to have control of this property’.⁴⁶

3.79 Accordingly, sections 3–5 of the 1924 Act provide that the trustees may:

- with the consent of the synod, mortgage the land to raise funds for effecting, or adding to existing, improvements on the land; and
- from time to time, lease or let any building erected on the land with moneys so raised, the proceeds from such lease or letting to be applied in paying the interest and principal of the loan and for such Anglican Church purposes as the trustees think proper.

3.80 The Act does not give the trustees power to sell the land.

ALL SAINTS CHURCH LANDS ACT 1960 (QLD)

3.81 The *All Saints Church Lands Act 1960* (Qld) (the ‘1960 Act’) was introduced in order to give the trustees of the All Saints Church lands ‘wider powers’ than were given by the 1924 Act. The Parliamentary Debates at the time note that the 1960 Act was intended to give the trustees power to:⁴⁷

⁴⁵ The *All Saints Church Lands Act 1924* (Qld) and the *All Saints Church Lands Act 1960* (Qld) both relate to the All Saints’ Anglican Church in Wickham Terrace at Spring Hill, Brisbane.

⁴⁶ See Queensland, *Parliamentary Debates*, Legislative Assembly, 9 October 1924, 1482 (W McCormack, Secretary of Public Lands).

⁴⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 27 September 1960, 492–3 (GFR Nicklin, Premier). See also at 27 October 1960, 1063–4 (GFR Nicklin, Premier).

lease or sell the land on which the old All Saints rectory is presently situated [and] ... to give wider powers of selling, leasing and mortgaging for the purpose of enabling the church to dispose of any part of the land which now or at any future time is found to be not required for church purposes, and of facilitating the raising of finance to meet the requirements of the parish of All Saints.

3.82 Whereas the 1924 Act had given the trustees power to mortgage the land for the purpose of effecting improvements on the land and to lease any buildings erected on the land with moneys so raised, the 1960 Act was intended to enable the trustees to sell, lease or mortgage any part of the land and to lease any buildings erected on the land. As was explained when the Bill was introduced into Parliament:⁴⁸

The trustees of this land wished to build All Saints Hall in 1924 and they got statutory power to mortgage with the consent of the synod, and that Act also gave power to lease any building erected on the land. But under the Act of 1924 the trustees would not have power to lease the rectory if they wished to do so because the rectory was not built with moneys raised under that Act.

3.83 The 1960 Act also differs in that the trustees' powers to deal with the property under that Act are subject to the consent and conditions of the Diocesan Council, rather than the consent of the Synod.

Property to which the 1960 Act applies

3.84 The 1960 Act relates to the two properties described in the Schedule to the Act (the 'All Saints Church lands'), being:

- Certificate of Title volume 1650 folio 235; and
- Certificate of Title volume 1650 folio 236.

Certificate of Title volume 1650 folio 235 (now Title Reference 11650235)

3.85 The first property described in the Schedule is currently registered in the names of John Patrick Cranley, Ian James Bruce and Donald William Bletchly, as trustees for Church of England purposes. The Trustees of the All Saints' Church, Wickham Terrace, have informed the Commission that that land is the site on which the All Saints Church currently stands.⁴⁹

Certificate of Title volume 1650 folio 236

3.86 The Trustees of the All Saints' Church, Wickham Terrace, have informed the Commission that the second property described in the Schedule is no longer held by the trustees under the 1960 Act.⁵⁰

⁴⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 27 September 1960, 494 (GL Hart).

⁴⁹ Information provided by the Trustees of the All Saints' Church, Wickham Terrace, 28 October 2013.

⁵⁰ Ibid.

3.87 In 1971, this land was subdivided into two lots. Pursuant to the *Acquisition of Land Act 1967* (Qld), one of those lots was resumed and vested in the Commissioner of Railways for railway purposes. The other lot was sold to an unrelated third party in 1991.⁵¹

The Commission's view

3.88 Since the trustees no longer hold any part of the second property described in the Schedule (being the land that was originally comprised in Certificate of Title volume 1650 folio 236), the long title, Preamble and Schedule to the 1960 Act should be amended to omit the reference to that particular property.

3.89 The long title, Preamble and Schedule to the 1960 Act should also be amended to refer to the land that continues to be held by the trustees (the first property described in the Schedule as being comprised of Certificate of Title volume 1650 folio 235) by its current real property description (Title Reference 11650235).

Whether the 1924 Act serves any further purpose

Whether there is any land covered by the 1924 Act not covered by the 1960 Act

3.90 The Preamble to the 1960 Act recites that the All Saints Church lands described in the Schedule to the Act are 'part' of the land that was granted by Deed of Grant No 12528, which was the land to which the 1924 Act applied.

3.91 A portion of the land to which the 1924 Act relates is the land that is owned by the Trustees of the All Saints' Church, Wickham Terrace, and on which the All Saints Church is built. The other land to which the 1924 Act related was sold in 1991.⁵² There is no longer any other land that is owned by the Trustees that is not subject to the 1960 Act.

The effect of the 1960 Act on the 1924 Act

3.92 Section 2 of the 1960 Act deals with the effect of that Act on the 1924 Act. Section 2(1) provides that nothing in the 1960 Act is to prejudice or affect a mortgage of the All Saints Church lands, or any lease or letting of a building erected on the lands, that was in existence when that Act was passed on 14 November 1960.

3.93 Subject to that exception, section 2(2) provides that the 1924 Act is, to the extent necessary to give operation and effect to the 1960 Act, to be read and construed subject to the 1960 Act.

⁵¹ The Trustees of the All Saints' Church, Wickham Terrace, with the consent of the Diocesan Council, sold the land being lot 2 on Registered Plan 124155 to Metway Bank Ltd in 1991: *ibid*.

⁵² See [3.87] above.

3.94 It appears that the combined effect of these provisions is that the 1924 Act will continue to have effect only to the extent of any mortgages or leases that were granted under that Act, and that were still in existence on 14 November 1960 when the 1960 Act was passed. Otherwise, the powers of mortgaging and leasing conferred by the 1924 Act would effectively be superseded by the powers given by the 1960 Act, and any new mortgage or lease granted on or after 14 November 1960 would be granted under the powers conferred by the 1960 Act.

3.95 The Trustees of the All Saints Church, Wickham Terrace, have informed the Commission that there were no mortgages or leases granted under the 1924 Act at any stage.⁵³ In their view, the 1924 Act could, therefore, be repealed.

The Commission's view

3.96 As mentioned above, the land that is owned by the Trustees, and on which the All Saints' Church, Wickham Terrace, stands is subject to both the 1924 and the 1960 Acts. There is no other land owned by the Trustees that is subject to the 1924 Act. Further, no mortgages or leases were ever granted under the 1924 Act.

3.97 In those circumstances, the 1924 Act serves no further purpose and should be repealed. This would not affect the previous operation of that Act.⁵⁴

3.98 Further, on the basis that the 1924 Act is no longer relevant (because there were no mortgages or leases granted under the 1924 Act at any stage), a consequential amendment should be made to repeal section 2 of the 1960 Act, which provides for the saving of existing mortgage, lease or letting transactions affecting the All Saints Church lands and for the continuing operation of the 1924 Act.

ANGLICAN CHURCH OF AUSTRALIA CONSTITUTION ACT 1961 (QLD)

3.99 The 'Anglican Church of Australia'⁵⁵ was established on a formal basis under a constitution that came into effect on 1 January 1962. Section 68 of the constitution provided for it to take effect, among other things, only after the Parliaments of five States had passed Acts for giving effect to the constitution.⁵⁶

3.100 The *Anglican Church of Australia Constitution Act 1961* (Qld) was one of those Acts. It was originally enacted as the *Church of England in Australia*

⁵³ Information provided by the Trustees of the All Saints' Church, Wickham Terrace, 28 October 2013.

⁵⁴ *Acts Interpretation Act 1954* (Qld) s 20(2)(b).

⁵⁵ The name of the Church was changed in 1981 from 'The Church of England in Australia' to 'The Anglican Church of Australia'. The name change was given effect by legislation enacted in the Australian States and Territories, including the *Anglican Church of Australia Act 1977* (Qld).

⁵⁶ *The Constitution of the Anglican Church of Australia* s 68(1), in *The Anglican Church of Australia, The Constitution Canons and Rules of The Anglican Church of Australia 2010* (Broughton Publishing, 9th ed, 2011) 33, which is available at http://www.anglican.org.au/docs/Constitution%20Canons%20BOOK%20FINALrevclient_indexed.pdf.

Constitution Act 1961 (Qld), and was renamed by the *Anglican Church of Australia Act 1977* (Qld).⁵⁷

3.101 Section 2 is the principal provision of the Act. It provides that the constitution and any canons and rules to be made under it are, for all purposes connected with or in any way relating to the property of the Anglican Church of Australia, binding on the bishops, clergy and laity as members of the Anglican Church of Australia in those dioceses of the Anglican Church that are within the State and in that part of the Diocese of Carpentaria that is within the State.⁵⁸

3.102 The Act also deals with incidental matters such as the effect of any inconsistency with any other Act; the construction of references to the Church of England in other Acts, grants, deeds, wills and other instruments, canons, ordinances and rules of the synods; the recognition of oaths of ecclesiastical office and the taking of evidence upon oath in Church tribunal proceedings.⁵⁹ The Act further provides for the continued application of the Acts referred to in Schedule 2 (which includes a number of the other Anglican Church Acts that are the subject of this review),⁶⁰ subject to the *Anglican Church of Australia Constitution Act 1961* (Qld) and the constitution.⁶¹

Preamble and section 2: References to the constitution of the Anglican Church of Australia contained in Schedule 1 of the Act

3.103 The constitution of the Anglican Church of Australia was set out in full in the schedule to that Act when passed, but has since been omitted under the *Reprints Act 1992* (Qld).⁶² The constitution has been amended from time to time by canons made under it by the General Synod.⁶³

⁵⁷ *Anglican Church of Australia Act 1977* (Qld) s 4, sch 1.

⁵⁸ The background to the *Anglican Church of Australia Constitution Act 1961* (Qld) was discussed in *Scandrett v Dowling* (1992) 27 NSWLR 483, 491–3 (Mahoney JA) (discussing the similar Act in New South Wales). In that case, consideration was given to s 2 of the New South Wales Act, which is virtually identical to the equivalent provision in the Queensland Act. See also RD Lumb, 'Corporate Personality' (1964) 4 *University of Queensland Law Journal* 418, 430.

⁵⁹ *Anglican Church of Australia Constitution Act 1961* (Qld) ss 3–4, 6–8.

⁶⁰ The Acts cited in sch 2 of the *Anglican Church of Australia Constitution Act 1961* (Qld) are currently in force with the exception of the *Ipswich Church of England School Land Lease Act 1877* (Qld), the *Fortitude Valley Parsonage Land Sale Act 1877* (Qld), the *Brisbane Leichhardt Street School and the Warwick Rectory and Glebe Property Act 1892* (Qld) and the *William Mitchner Estate Enabling Act 1941* (Qld), which were repealed by the *Acts Repeal Act 1973* (Qld) s 2, sch. The *Bishopsbourne Estate Act 1900* (Qld) was repealed by the *Statute Law Revision Act 1995* (Qld) s 5(1), sch 6, but continues to have effect by virtue of the *Acts Interpretation Act 1954* (Qld) s 20A: *Statute Law Revision Act 1995* (Qld) s 5(3), sch 9.

⁶¹ *Anglican Church of Australia Constitution Act 1961* (Qld) s 5.

⁶² See *Reprints Act 1992* (Qld) s 39, which provides that, if 'a provision of a law is obsolete or redundant because of the making of any law, the provision may be omitted'.

⁶³ The consolidated text of the constitution is included in The Anglican Church of Australia, *The Constitution Canons and Rules of The Anglican Church of Australia 2010* (Broughton Publishing, 9th ed, 2011), which is available at http://www.anglican.org.au/docs/Constitution%20Canons%20BOOK%20FINALrevclient_indexed.pdf. See ch XI of the constitution as to the way in which amendments to the constitution may be made.

3.104 Despite its omission, section 2 of the *Anglican Church of Australia Constitution Act 1961* (Qld) still refers to the constitution contained in schedule 1 of the Act, explaining, by way of a footnote, that the schedule is not reprinted. It provides:

2 Constitution to have legal force and effect

The several articles and provisions of the constitution contained in schedule 1 (the *constitution*)¹ and any canons and rules to be made under or by virtue or in pursuance thereof are and as provided in the constitution shall be for all purposes connected with or in any way relating to the property of the Anglican Church of Australia binding on the bishops, clergy and laity as members of the Anglican Church of Australia in those dioceses of the Anglican Church which are within the State and in that part of the Diocese of Carpentaria which is within the State.

¹ This schedule is not reprinted. The text of the constitution contained in the schedule has been amended by appropriate church authorities and is now out of date. (emphasis added)

3.105 As well as section 2, the long title, the Preamble (in unnumbered paragraph 5) and section 5 of the Act refer to the constitution contained in schedule 1 of the Act (or words of similar effect). In sections 2 and 5, the references are in the context of provisions with a continuing, future operation.

3.106 The Anglican Church in the Diocese of Brisbane and the Anglican Diocese of North Queensland both considered that those references to the constitution should be changed to refer to the constitution ‘as amended from time to time’.

The Commission’s view

3.107 For the purposes of updating the *Anglican Church of Australia Constitution Act 1961* (Qld) and clarifying its provisions, the Act should be amended to change the references in the long title, the Preamble (in unnumbered paragraph 5) and sections 2 and 5 of the Act to the constitution so that, instead of referring to schedule 1 of the Act, they simply refer to the constitution ‘as amended from time to time’.

Preamble, sections 2, 4(1) and 5: references to the Diocese of Carpentaria

3.108 The Diocese of Carpentaria was formed in 1900 from part of the northern area of North Queensland.⁶⁴ However, the Commission understands that there is no longer a Diocese of Carpentaria, as it was reincorporated into the Diocese of North Queensland in 1996.⁶⁵

⁶⁴ K Rayner, *The History of the Church of England in Queensland* (PhD Thesis, The University of Queensland, 1962) 124; The Anglican Diocese of North Queensland, *History of NQ Diocese* <<http://www.anglicannq.com/About%20Us/history.html>>. When it was formed, the Diocese of Carpentaria had comprised ‘the Cape York Peninsula north of Cairns, the Gulf Country, the islands of the Torres Strait ..., and the whole of the Northern Territory’.

⁶⁵ See The Anglican Diocese of North Queensland, *History of NQ Diocese* <<http://www.anglicannq.com/About%20Us/history.html>>; and The Anglican Diocese of North Queensland, *General Information* <<http://anglicannq.wordpress.com/registry/general-information/>>.

3.109 References to the Diocese of Carpentaria are contained in the Preamble (unnumbered paragraph 1) and sections 2, 4(1) and 5 of the *Anglican Church of Australia Constitution Act 1961* (Qld).

3.110 The Diocese of North Queensland has informed the Commission that it would have no objection to the deletion of the references in sections 2, 4(1) and 5 to the Diocese of Carpentaria.

The Commission's view

3.111 The Commission notes that the reference in the Preamble of the *Anglican Church of Australia Constitution Act 1961* (Qld) to the Diocese of Carpentaria is in the context of a recital of past events, namely, the assent of the dioceses in the State to the constitution and the submission of the dioceses to the Church of England in Australia. In that context, the reference to the former Diocese of Carpentaria seems appropriate.

3.112 However, in sections 2, 4(1) and 5 of the Act, the references to the Diocese of Carpentaria are in the context of provisions with continuing, future operation. In the Commission's view, it is appropriate to remove those references to the Diocese of Carpentaria since that diocese no longer exists.

Section 8: Taking of evidence upon oath

3.113 Section 8 provides that, for the purpose of securing the attendance of a witness and the production of documents, and for the examination of witnesses on oath or otherwise, a tribunal mentioned in chapter 9 of the constitution is deemed to be 'an arbitrator within the meaning of the *Interdict Act 1867*'. The reference in section 8 to an arbitrator within the meaning of the *Interdict Act 1867* is no longer current, as that Act has been repealed.⁶⁶ The current Queensland legislation dealing with commercial arbitrations is the *Commercial Arbitration Act 2013* (Qld).

3.114 The Anglican Church in the Diocese of Brisbane and the Anglican Diocese of North Queensland both expressed the view that the reference in section 8 to the '*Interdict Act 1867*' should be changed to the '*Commercial Arbitration Act 2013*'.

The Commission's view

3.115 The *Anglican Church of Australia Constitution Act 1961* (Qld) should be updated by omitting the reference in section 8 to the '*Interdict Act 1867*' and inserting in its place a new reference to the '*Commercial Arbitration Act 2013*'.

⁶⁶

The *Arbitration Act 1973* (Qld) consolidated and amended the law relating to arbitration, and omitted the arbitration provisions (ss 2–21) of the *Interdict Act 1867* (Qld): *Arbitration Act 1973* (Qld) s 3(1), sch 1. The *Arbitration Act 1973* (Qld) was repealed by the *Commercial Arbitration Act 1990* (Qld): *Commercial Arbitration Act 1990* (Qld) s 3(1). The *Commercial Arbitration Act 1990* (Qld) was, in turn, repealed by the *Commercial Arbitration Act 2013* (Qld): *Commercial Arbitration Act 2013* (Qld) s 41.

ANGLICAN CHURCH OF AUSTRALIA ACT 1977 (QLD)

3.116 The *Anglican Church of Australia Act 1977* (Qld) was enacted to give legislative recognition to the change of name of the Church of England in Australia to the 'Anglican Church of Australia'.⁶⁷

3.117 The *Anglican Church of Australia Act 1977* (Qld) is principally comprised of only two substantive provisions and is, therefore, a very short Act.

3.118 Section 3 of the Act provides that the name of the Church of England in Australia referred to in the *Church of England in Australia Constitution Act 1961* (Qld) is thereby changed to Anglican Church of Australia.

3.119 Section 4 of the Act facilitates the change of name in relation to various Acts, including the Acts mentioned in Schedule 1 of the Act (which includes the other Anglican Church Acts that are the subject of this review),⁶⁸ statutory instruments, church canons, ordinances, rules and regulations, and grants, wills, deeds and other instruments.⁶⁹

3.120 The remaining parts of the Act are the Preamble, sections 1 (the short title) and 5 (a savings provision) and the Schedule.

3.121 The Anglican Church in the Diocese of Brisbane and the Anglican Diocese of North Queensland both expressed the view that the provisions of the *Anglican Church of Australia Constitution Act 1961* (Qld) and the *Anglican Church of Australia Act 1977* (Qld) could be consolidated within one Act.

The Commission's view

3.122 The provisions of the *Anglican Church of Australia Constitution Act 1961* (Qld) and the *Anglican Church of Australia Act 1977* (Qld) are both short Acts, dealing with general matters. The Commission considers that these statutes should be modernised and simplified by consolidating them in a single Act. This consolidation should be effected by relocating sections 3–5 of the *Anglican Church of Australia Act 1977* (Qld), as well as the Preamble and Schedule 1 to that Act, to the *Anglican Church of Australia Constitution Act 1961* (Qld). This will enable the *Anglican Church of Australia Act 1977* (Qld) to be repealed.

⁶⁷ Queensland, *Parliamentary Debates*, Legislative Council, 17 March 1977, 2459 (WD Lickiss, Minister for Justice and Attorney-General). The *Anglican Church of Australia Act 1977* (Qld) was passed at the request of the provincial registrar of the Province of Queensland, following the enactment of similar legislation in New South Wales: at 2459.

⁶⁸ These Acts, which are set out in sch 1 of the *Anglican Church of Australia Act 1977* (Qld), are: the *Church of England (Diocese of Brisbane) Property Act 1889* (Qld); the *Church of England Act 1895* (Qld); the *Bishopsbourne Estate and See Endowment Trusts Act 1898* (Qld); the *Bishopsbourne Estate Act 1900* (Qld); the *Church of England Act 1895 Amendment Act 1901* (Qld); the *All Saints Church Lands Act 1924* (Qld); the *All Saints Church Lands Act 1960* (Qld) and the *Church of England in Australia Constitution Act 1961* (Qld). The *Bishopsbourne Estate Act 1900* (Qld) was repealed by the *Statute Law Revision Act 1995* (Qld) s 5(1), sch 6, but continues to have effect by virtue of the *Acts Interpretation Act 1954* (Qld) s 20A: *Statute Law Revision Act 1995* (Qld) s 5(3), sch 9.

⁶⁹ *Anglican Church of Australia Act 1977* (Qld) ss 3–4.

RECOMMENDATIONS

3.123 The Commission makes the following recommendations in relation to the Acts considered in this chapter:

Rec	Act	Provision	Recommendation
Anglican Church of Australia (Diocese of Brisbane) Property Act 1889 (Qld)			
3-1	<i>Anglican Church of Australia (Diocese of Brisbane) Property Act 1889 (Qld)</i>	Whole Act	Repeal. Declare s 11 to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
Anglican Church of Australia Act 1895 (Qld)			
3-2	<i>Anglican Church of Australia Act 1895 (Qld)</i>	Section 2	Omit. Declare it to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
3-3	<i>Anglican Church of Australia Act 1895 (Qld)</i>	Sections 4–6	Omit.
Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)			
3-4	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Section 2(2)	Omit.
3-5	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Schedule	Omit.
3-6	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Remaining provisions	Relocate the remaining provisions to the <i>Anglican Church of Australia Act 1895 (Qld)</i> .
3-7	<i>Anglican Church of Australia Act 1895 Amendment Act 1901 (Qld)</i>	Whole Act	Repeal.
Bishopsbourne Estate and See Endowment Trusts Act 1898 (Qld)			
3-8	<i>Bishopsbourne Estate and See Endowment Trusts Act 1898 (Qld)</i>	Section 2(1)(a)–(c)	Omit.
All Saints Church Act 1924 (Qld)			
3-9	<i>All Saints Church Act 1924 (Qld)</i>	Whole Act	Repeal.
All Saints Church Act 1960 (Qld)			
3-10	<i>All Saints Church Act 1960 (Qld)</i>	Long title, Preamble and Schedule	Omit references to the land comprised in Certificate of Title number 302746, volume 1650 folio 236.

Rec	Act	Provision	Recommendation
			Omit real property description for land comprised in Certificate of Title volume 1650 folio 235) and insert current property description (Title Reference 11650235).
3-11	<i>All Saints Church Act 1960</i> (Qld)	Section 2	Omit.
Anglican Church of Australia Constitution Act 1961 (Qld)			
3-12	<i>Anglican Church of Australia Constitution Act 1961</i> (Qld)	Long title, Preamble (unnumbered paragraph 5), sections 2 and 5	Omit references to the constitution 'contained in schedule 1' (or similar) and recast to refer to the constitution 'as amended from time to time'.
3-13	<i>Anglican Church of Australia Constitution Act 1961</i> (Qld)	Sections 2, 4(1) and 5	Omit references to the 'Diocese of Carpentaria'.
3-14	<i>Anglican Church of Australia Constitution Act 1961</i> (Qld)	Section 8	Omit— 'Interdict Act 1867'. Insert— 'Commercial Arbitration Act 2013'.
Anglican Church of Australia Act 1977 (Qld)			
3-15	<i>Anglican Church of Australia Act 1977</i> (Qld)	Preamble, sections 3–5 and Schedule 1	Relocate to the <i>Anglican Church of Australia Constitution Act 1961</i> (Qld).
3-16	<i>Anglican Church of Australia Act 1977</i> (Qld)	Whole Act	Repeal.

Chapter 4

The Chinese Temple Society

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INTRODUCTION

4.1 The terms of reference require the Commission to review the *Chinese Temple Society Act 1964* (Qld), which concerns the Joss House at Higgs Street, Breakfast Creek, Brisbane.

4.2 The land on which the Joss House is built was originally purchased in 1903 by members of the Chinese community.¹ At the time the *Chinese Temple Society Act 1964* (Qld) was enacted, the land was still registered in the names of the original six proprietors in whom it had been registered in 1903.² Those persons had died, or were presumed to have died, as a result of which it was not possible to establish the trusts on which the land was held. Nor was it possible to have new trustees appointed by the existing trustees.³

4.3 To overcome these difficulties, the Chinese Temple Society was incorporated by letters patent issued on 12 March 1964 under the *Religious Educational and Charitable Institutions Act 1861* (Qld),⁴ thus giving the Society perpetual succession.⁵ Further, at the request of the Society, the *Chinese Temple Society Act 1964* (Qld) was passed in order to vest in the Society the land on which the Joss House is built.⁶

1 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 March 1964, 2754 (PR Delamothe, Minister for Justice).

2 Department of Natural Resources and Mines (Qld), Certificate of Title vol 1013 folio 35 (Title Reference 11013035).

3 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 March 1964, 2754 (PR Delamothe, Minister for Justice).

4 *Chinese Temple Society Act 1964* (Qld) Preamble para 5.

5 *Religious Educational and Charitable Institutions Act 1861* (Qld) s 1. See also Queensland, *Parliamentary Debates*, Legislative Assembly, 20 March 1964, 2754 (PR Delamothe, Minister for Justice).

6 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 March 1964, 2754 (PR Delamothe, Minister for Justice); *Chinese Temple Society Act 1964* (Qld) Preamble para 6.

CHINESE TEMPLE SOCIETY ACT 1964 (QLD)

4.4 The *Chinese Temple Society Act 1964* (Qld) is a short Act, having only four substantive provisions.

Sections 3, 4 and 5: Vesting of property, title and exemption from stamp duty and registration fees

4.5 Section 3 of the *Chinese Temple Society Act 1964* (Qld) vested the 'said land'⁷ and all improvements thereon and all other property forming part of the Chinese Joss House in the Chinese Temple Society (the 'corporation') 'without any transfer or conveyance whatsoever, but subject to and without prejudice to any mortgage, lien, trust or other interest' affecting the land.

4.6 Section 4 required the registrar of titles, upon request, to register the corporation as proprietor of the land for an estate in fee simple and to issue a new certificate of title.

4.7 Section 5 exempted the corporation from paying stamp duty on any instrument or document used pursuant to sections 3 and 4, or fees on any registration effected pursuant to sections 3 and 4 or on the issuing of the new certificate of title that was required to be issued under section 4.

4.8 Title searches of the relevant land reveal that the Chinese Temple Society was registered as the proprietor of an estate in fee simple in the subject land on 3 August 1964,⁸ and that the new certificate of title issued on 20 August 1964.⁹

Section 6: Holding of property

4.9 Section 6 provides that the said land and improvements and any other property vested in the corporation is to be held:

upon such terms, conditions and trusts as the constitution of the corporation may provide from time to time subject to any trusts, conditions or charges upon any part thereof created by the donor of such part.

4.10 Under the *Religious Educational and Charitable Institutions Act 1861* (Qld), a corporation holds the property that is vested in it 'for the uses and purposes of the said Corporation and of the religious or secular institution by which such person or persons and their successors shall be so called'. The Act further provides that the powers conferred to mortgage, charge or alienate the property must not be contrary to the gift, grant or dedication of the original donor.¹⁰

⁷ The current real property description of the land is lots 57, 58 and 59 on Registered Plan 33460, County of Stanley, Parish of Toombul, City of Brisbane (Title Reference 13692099). Cf *Chinese Temple Society Act 1964* (Qld) s 2 (definition of 'said land').

⁸ Department of Natural Resources and Mines (Qld), Certificate of Title vol 1013 folio 35 (Title Reference 11013035).

⁹ Department of Natural Resources and Mines (Qld), Certificate of Title vol 3692 folio 99 (Title Reference 13692099).

¹⁰ *Religious Educational and Charitable Institutions Act 1861* (Qld) s 1.

THE COMMISSION'S VIEW

4.11 Because the relevant land has been registered in the name of the Chinese Temple Society, sections 3, 4 and 5 serve no further purpose and should be repealed. This will not affect anything suffered, done or begun, or any right, privilege or liability acquired, accrued or incurred under those provisions.¹¹

4.12 That will leave section 6 as the sole substantive provision of the Act. It is unclear whether section 6 adds anything to the provisions of the *Religious Educational and Charitable Institutions Act 1861* (Qld) that provide for the uses and purposes for which the relevant land is held.

4.13 In this situation, because the Act is otherwise obsolete, the Commission is of the view that the most appropriate course is to repeal the whole of the *Chinese Temple Society Act 1964* (Qld), but declare the Act to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. This will ensure that, to the extent that section 6 could have any continuing application, its effect does not end merely because of the repeal of the Act.

RECOMMENDATION

4.14 The Commission makes the following recommendation in relation to the *Chinese Temple Society Act 1964* (Qld):

Rec	Act	Provision	Recommendation
4-1	<i>Chinese Temple Society Act 1964</i> (Qld)	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954</i> (Qld) applies.

¹¹

Acts Interpretation Act 1954 (Qld) s 20(2)(b)–(c).

Chapter 5

Churches of Christ, Scientist

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INTRODUCTION

5.1 The First Church of Christ, Scientist (known as 'The Mother Church') was founded in Boston, Massachusetts in 1879 by Mary Baker Eddy.¹

5.2 Members of the Churches of Christ, Scientist accept and hold the principles, faith and doctrines known as Christian Science and, in particular, the principles of faith and practice laid down in the Church Manual of The First Church of Christ, Scientist, in Boston, Massachusetts.²

CHURCHES OF CHRIST, SCIENTIST, INCORPORATION ACT 1964 (QLD)

Background

5.3 The Preamble to the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) recites that members of the denomination known as Christian Science had formed themselves into separate bodies or associations called, respectively:

- First Church of Christ, Scientist, Brisbane;
- Second Church of Christ, Scientist, Brisbane;
- Third Church of Christ, Scientist, Brisbane; and
- First Church of Christ, Scientist, Toowoomba.

¹ See Christian Science, *Mary Baker Eddy—discoverer, founder, author, teacher* (2013) <<http://christianscience.com/what-is-christian-science/mary-baker-eddy-discoverer-founder-author>>; EA Livingstone (ed), *The Concise Oxford Dictionary of the Christian Church* (Oxford University Press, 2nd ed, 2006), 'Christian Science'.

² See Mary Baker Eddy, *Manual of The Mother Church The First Church of Christ, Scientist, in Boston, Massachusetts* (The Christian Science Board of Directors, 89th ed, 2013) <<http://christianscience.com/read-online/manual-of-the-mother-church>>.

5.4 The Preamble further recites that certain members who were officers of those bodies or associations and their successors had, by those names, been incorporated separately under the *Religious Educational and Charitable Institutions Act 1861* (Qld).

5.5 The *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) was enacted at the request of representatives of the Church to provide a method of incorporation of Churches of Christ, Scientist that was better adapted to the particular organisational requirements of the Church than the *Religious Educational and Charitable Institutions Act 1861* (Qld).³ The *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) achieved this by:

- incorporating, as separate bodies corporate under the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld), the members of First Church of Christ, Scientist, Brisbane, Second Church of Christ, Scientist, Brisbane, Third Church of Christ, Scientist, Brisbane, and First Church of Christ, Scientist, Toowoomba;
- divesting the property from the four bodies corporate that had earlier been established under the *Religious Educational and Charitable Institutions Act 1861* (Qld), and vesting that property in the newly formed bodies corporate; and
- making provision for the incorporation, under the Act, of further Churches of Christ, Scientist in the future.

5.6 The Act was amended in 2008 to dissolve the Second Church of Christ, Scientist, Brisbane and to include a mechanism for the winding-up of other churches in the future.⁴

5.7 Similar legislation has been enacted in each State of Australia,⁵ although the Queensland Act is the only Act that makes provision for the winding-up of a Church of Christ, Scientist.

5.8 First Church of Christ, Scientist, Brisbane has informed the Commission that, in general in its view, the 'Act remains necessary and important for Christian Scientists in Queensland at this time'.

Incorporation of the four established churches under the Act

5.9 The *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) differs from most of the other Acts that are the subject of this review in that it does not merely

³ Queensland, *Parliamentary Debates*, Legislative Assembly, 12 March 1964, 2417 (PR Delamothe, Minister for Justice).

⁴ See [5.29] ff below.

⁵ *Churches of Christ, Scientist, Incorporation Act 1962* (NSW); *Churches of Christ, Scientist, Incorporation Act 1963* (SA); *Churches of Christ, Scientist, Incorporation Act 1980* (Tas); *Churches of Christ, Scientist Incorporation Act 1958* (Vic); *Churches of Christ, Scientist, Incorporation Act 1961* (WA).

incorporate a body corporate to hold the church's property, but incorporates the members of the church as a body corporate.⁶

5.10 Section 2(1) provides that, from the date of the passing of the Act, the persons who are members of the four named churches:

and who now or hereafter constitute the bodies or associations called respectively First Church of Christ, Scientist, Brisbane, Second Church of Christ, Scientist, Brisbane, Third Church of Christ, Scientist, Brisbane, and First Church of Christ, Scientist, Toowoomba shall become and be incorporated under this Act and shall be separate bodies corporate by the names respectively of First Church of Christ, Scientist, Brisbane, Second Church of Christ, Scientist, Brisbane, Third Church of Christ, Scientist, Brisbane, and First Church of Christ, Scientist, Toowoomba, ...(emphasis added)

5.11 Section 2(1A) provides that the four bodies corporate that were constituted under the *Religious Educational and Charitable Institutions Act 1861* (Qld) shall cease to be so incorporated, and that the property belonging to, or held in trust for, the churches in question and all rights and obligations shall be divested from those bodies corporate and shall vest in the relevant corporations of the members of such churches constituted by the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld).⁷

5.12 Section 2(1A) also provides that any legal proceedings that might have been commenced or continued by or against a former body corporate constituted under the *Religious Educational and Charitable Institutions Act 1861* (Qld) may be commenced or continued against the corporation constituted under the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) in respect of the church in question.

5.13 First Church of Christ, Scientist, Brisbane has informed the Commission that, in its view, section 2(1A) could be repealed if the amending Act declares that section to be a law to which section 20A of the *Acts Interpretation Act 1954* (Qld) applies. It has also expressed the view that unnumbered paragraph 2 of the Preamble to the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld)⁸ is no longer necessary and can be omitted.

The Commission's view

5.14 To the extent that section 2(1A) provides that the four bodies corporate that were incorporated under the *Religious Educational and Charitable Institutions Act 1861* (Qld) cease to be so incorporated, it serves no further purpose.

⁶ *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) s 2(5) provides that the administration of the affairs and the exercise of the powers of each church are vested in the executive board duly appointed pursuant to the by-laws and rules of that church.

⁷ *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) s 3 also deals with the vesting of property belong to, or held in trust for, the four named churches or the executive board of any committee of those churches. Section 3(1) provides that, from and after the passing of the Act, such property vests in the four bodies corporate incorporated by the Act without the necessity for any conveyance, transfer, or other assurance of such property. Section 3(2) requires the registrar of titles or any person charged with registering instruments of title, on application, to register the church as proprietor of the land or estate or interest in land vested under s 3(1).

⁸ See [5.4] above.

5.15 Similarly, to the extent that section 2(1A) provides that any legal proceedings that might have been continued against one of those bodies corporate may be continued against the corporation constituted under the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld), it would appear to serve no further purpose.

5.16 Given the length of time that has elapsed since the Act was passed, it is unlikely that there would be any legal proceedings that might have been commenced against one of those corporations immediately prior to the passing of the Act. Further, this part of section 2(1A) would appear to be a provision that 'declares a thing for a ... transitional purpose', the effect of which would be preserved by sections 20(4)(d) and 20A(2)(a) of the *Acts Interpretation Act 1954* (Qld) even if the section were repealed.

5.17 In the Commission's view, section 2(1A) should therefore be repealed.

5.18 However, in light of the submission from First Church of Christ, Scientist, Brisbane, and the possibility, albeit remote, that there might still be scope for the second part of section 2(1A) to operate, the Commission considers that the amending legislation should declare it to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. This would ensure that the effect of section 2(1A) does not end merely because of its repeal.

5.19 The Commission also considers that, given that the four bodies corporate constituted under the *Religious Educational and Charitable Institutions Act 1861* (Qld) ceased to exist when the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) commenced, there is no need to retain the reference to those bodies corporate in unnumbered paragraph 2 of the Preamble to the Act. Accordingly, that paragraph of the Preamble should be omitted.

Incorporation of other churches

5.20 In addition to making provision for the incorporation of the four churches that were constituted on the passing of the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld), the Act makes provision for other bodies or associations to be incorporated as a Church of Christ, Scientist.

5.21 Sections 4 and 5 govern the conditions and procedure for incorporation.⁹ In particular, section 5(1)(d) requires certain documents to be filed in the office of the chief executive, while section 5(2) requires the chief executive to issue a receipt for those documents. Section 5(3) provides that, upon production of that receipt, the Governor in Council may, by regulation, declare the body or association to be a body corporate by such name and style as may be given by the regulation to the corporation, whereupon such body or association is to become and be incorporated under the Act as a Church of Christ, Scientist.

⁹

Churches of Christ, Scientist, Incorporation Act 1964 (Qld) s 5 provides that a resolution for the incorporation of the body or association must be carried by a vote of three-fourths of the members present at a special meeting; the body or association must have been in existence for six months prior to the date of the resolution; and the bona fides of the body or association must be certified in writing under the seal of the Mother Church in Boston.

5.22 These provisions continue to be relevant to the incorporation of additional churches in the future. As a matter of drafting, however, there is some minor duplication of language between sections 4 and 6.

5.23 Section 4 provides:

4 Incorporation of churches to be formed

After the passing of this Act if and when any number of persons not less than 16 and including at least 4 members of the Mother Church, the First Church of Christ, Scientist, in Boston, Massachusetts, United States of America, accepting and holding the said principles, faith, and doctrines and adhering to the said tenets and acknowledging and adopting the principles of church organisation, discipline, teaching, worship, service, procedure, and practice laid down in the said manual shall form themselves into a body or association to be known as a Church of Christ, Scientist such body [or] association may subject to the conditions stated [in] section 5 become a corporate body with the same powers, authorities, and privileges and subject to the same duties and liabilities mutatis mutandis as those provided in this Act in respect of the churches mentioned in section 2. (emphasis added)

5.24 Section 6(a) further provides that, upon incorporation under section 5:

- (a) such church shall have mutatis mutandis the same rights, powers,¹⁰ and privileges, and, be subject to the same duties and liabilities as those hereinbefore provided in this Act in respect of the churches mentioned in section 2; ... (emphasis added; note added)

5.25 First Church of Christ, Scientist, Brisbane has informed the Commission that, in its view, section 4 of the Act should be amended to omit the last part of the section commencing with the words ‘with the same powers, authorities, and privileges ...’. It also expressed the view that the two typographical errors that appear in section 4 should be corrected.

The Commission’s view

5.26 Given the overlap between sections 4 and section 6(a) of the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld), the Commission considers that section 4 should be amended to omit the words:

with the same powers, authorities, and privileges and subject to the same duties and liabilities mutatis mutandis as those provided in this Act in respect of the churches mentioned in section 2.

5.27 This will remove the duplication between sections 4 and 6(a) of the Act and simplify the drafting of section 4.

5.28 The Commission is also of the view that section 4 should be amended to correct the typographical errors that appear in the provision by:

- replacing the words ‘body of association’ with ‘body or association’; and
- replacing the words ‘stated section 5’ with ‘stated in section 5’.

¹⁰

Acts Interpretation Act 1954 (Qld) s 36, sch 1 defines ‘power’ to include ‘authority’.

Winding-up provisions

5.29 Sections 7A and 7B of the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) were inserted in 2008 to dissolve the Second Church of Christ, Scientist, Brisbane, and to make provision for other Churches that are incorporated under the Act to be wound up in the future.¹¹

5.30 The Explanatory Notes to the amending Bill explained that it was necessary to make provision for the winding-up of the Second Church of Christ, Scientist, Brisbane as it had been reduced to only one member:¹²

There is only one remaining member of the Second Church of Christ, Scientist, Brisbane, which means that this incorporated body cannot form the quorum necessary to wind it up. Amendments are therefore necessary to the *Churches of Christ, Scientist, Incorporation Act 1964* to enable the winding-up of entities incorporated under the Act.

5.31 Section 7A(1)–(2) provided for the immediate dissolution of the Second Church of Christ, Scientist, Brisbane, and deemed its dissolution to be a winding-up of an incorporated association under section 90 of the *Associations Incorporation Act 1981* (Qld).

5.32 Section 7A(3) vested in the First Church of Christ, Scientist, Brisbane:

- all property belonging to, or held in trust for, the Second Church of Christ, Scientist, Brisbane immediately before the commencement of the section; and
- all of the rights and obligations of the Second Church of Christ, Scientist, Brisbane as in force immediately before the commencement of the section.

5.33 Section 7A(5)–(6) requires the registrar of titles, at the chief executive's request, to record in the freehold land register the vesting of any property under section 7A(3). The fee for recording any such vesting is waived by section 7A(7).

5.34 Section 7A(4) provides that all legal proceedings that might have been started or continued by or against the Second Church immediately before the commencement of that section may be started or continued against the First Church of Christ, Scientist, Brisbane.

5.35 Section 7B of the Act provides that a church mentioned in section 2 (other than the Second Church of Christ, Scientist, Brisbane) or a church incorporated under section 4 of the Act is an incorporated association and may be wound-up under Part 10 of the *Associations Incorporation Act 1981* (Qld). Section 7B(2) provides that, despite section 92 of the *Associations Incorporation Act 1981* (Qld), a regulation may provide for the vesting of surplus assets of a church that is wound-up.

¹¹ *Justice (Fair Trading) Legislation Amendment Act 2008* (Qld) s 10.

¹² Explanatory Notes, *Justice (Fair Trading) Legislation Amendment Bill 2008* (Qld) 1.

5.36 First Church of Christ, Scientist, Brisbane has informed the Commission that, in its view, section 7A of the Act could be repealed if the amending Act declares that section to be a law to which section 20A of the *Acts Interpretation Act 1954* (Qld) applies.

The Commission's view

5.37 To the extent that section 7A of the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) provided for the dissolution of the Second Church of Christ, Scientist and the vesting of its property, rights and obligations in the First Church of Christ, Scientist, it has no further application.

5.38 However, there is a possibility, albeit remote, that there may be real property that was held by the Second Church of Christ, Scientist, Brisbane that has not yet been recorded in the freehold land register as being vested in the name of the First Church of Christ, Scientist, Brisbane.

5.39 For this reason, and in light of the submission from First Church of Christ, Scientist, Brisbane, the Commission is of the view that section 7A should be repealed but declared to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies.

5.40 This would ensure that the effect of section 7A does not end merely because of its repeal. Apart from preserving the mechanism in section 7A(5)–(7) for recording the vesting of property that was previously held by the Second Church of Christ, Scientist, Brisbane, it would also ensure the continued operation of section 7A(4) in relation to legal proceedings that might have been started or continued against the Second Church immediately before its dissolution.

References to the 'Second Church of Christ, Scientist, Brisbane'

5.41 Apart from section 7A of the Act, which provides for the dissolution of the Second Church of Christ, Scientist, Brisbane, the Act includes a number of other references to that Church:

- Preamble, unnumbered paragraphs 1 and 4;
- section 2(1) (three references) and (1A);
- section 3(1) (two references); and
- section 7B(3)(a).

5.42 Given that the Second Church of Christ, Scientist, Brisbane was dissolved on 22 May 2009 (when section 7A commenced), there does not appear to be any reason to retain these references.

5.43 First Church of Christ, Scientist, Brisbane has informed the Commission that, in its view, the references in the Act to the Second Church of Christ, Scientist, Brisbane can now be omitted. It also expressed the view that the references in the Act to the Third Church of Christ, Scientist, Brisbane can also be omitted.

The Commission's view

5.44 Given that the Second Church of Christ, Scientist, Brisbane has been dissolved, the references to that particular Church in unnumbered paragraphs 1 and 4 of the Preamble to the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) and in sections 2(1), 3(1) and 7B(3)(a) are obsolete and should be omitted.¹³

5.45 There is also a possibility that the Third Church of Christ, Scientist, may no longer exist.¹⁴ In light of the submission from First Church of Christ, Scientist, Brisbane, the Commission considers that, if it can be confirmed that the Third Church of Christ, Scientist, Brisbane has been dissolved, the references to that Church in unnumbered paragraphs 1 and 4 of the Preamble to the Act and in sections 2(1) and 3(1) of the Act should also be omitted.

Other changes

5.46 First Church of Christ, Scientist, Brisbane has also submitted to the Commission that it would be convenient if certain names that appear throughout the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) could be capitalised. In particular, it suggested that the word 'the', which precedes the references to 'First Church of Christ, Scientist, in Boston, Massachusetts, in the United States of America' and 'Mother Church', be capitalised. It explained that:

This is an important change because it distinguishes The Mother Church from branch churches of Christ, Scientist and Christian Science societies which do not use 'The' in their titles — and this is in harmony with the *Church Manual*.

5.47 Similarly, it suggested that the reference to the 'Church manual', in the Preamble to the Act, and the subsequent references in the Act to the 'said manual' be capitalised.

5.48 In addition, First Church of Christ, Scientist, Brisbane submitted that some further changes should be made to the Act 'to make it more suited to the needs of the Christian Science movement in Queensland'. In particular, it suggested amendments to sections 2, 4 and 5 of the Act to:

- change the types of bodies that are eligible for incorporation under the Act, including to provide for the incorporation of 'Christian Science Societies';
- provide, subject to the approval of The Mother Church, that a Church of Christ, Scientist may be renamed as a 'Christian Science Society' and vice versa; and
- allow the bodies corporate incorporated under the Act to make by-laws and rules to provide for the procedures for the winding-up of the body corporate and the allocation of its remaining assets upon dissolution.

¹³ The Commission has recommended at [5.17] above that the whole of s 2(1A), which also contains a reference to the Second Church of Christ, Scientist, Brisbane, should be repealed.

¹⁴ See Christian Science Australia, *Queensland* <<http://christianscienceaustralia.org.au/queensland>>, which does not mention the Third Church of Christ, Scientist.

The Commission's view

5.49 To the extent that it is consistent with current legislative drafting practice, and in the interests of clarity, the Commission considers that the following changes should be made:

- the references in unnumbered paragraph 1 of the Preamble to the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld), sections 4 and 5(1)(b) of the Act, and the heading of the Schedule to the Act to 'the First Church of Christ, Scientist, in Boston, Massachusetts, in the United States of America' and to 'the Mother Church' should be changed to capitalise the initial words 'The' in each instance; and
- the references in unnumbered paragraphs 1 and 3 of the Preamble to the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld) and in sections 2(1) and 4 of the Act to 'Church manual' or 'manual' should be changed to capitalise the word 'Manual' in each instance.

5.50 However, the other amendments raised in the submission of First Church of Christ, Scientist, Brisbane are of a substantive nature and raise policy questions that fall outside the scope of the Commission's terms of reference. Accordingly, the Commission makes no recommendations about those matters.

RECOMMENDATIONS

5.51 The Commission makes the following recommendations in relation to the *Churches of Christ, Scientist, Incorporation Act 1964* (Qld):

Rec	Act	Provision	Recommendation
5-1	<i>Churches of Christ, Scientist, Incorporation Act 1964</i> (Qld)	Preamble unnumbered paragraphs 1, 4	<p>(1) Omit— 'Second Church of Christ, Scientist, Brisbane,'.</p> <p>(2) If it can be confirmed that it no longer exists, omit— 'Third Church of Christ, Scientist, Brisbane,'.</p> <p>(3) Capitalise 'the' in— 'the First Church of Christ, Scientist, in Boston, Massachusetts'; and 'the Mother Church'.</p> <p>(4) Capitalise 'manual'.</p>

Rec	Act	Provision	Recommendation
5-2	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Preamble unnumbered paragraph 2	Omit.
5-3	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Preamble unnumbered paragraph 3	Capitalise 'manual'.
5-4	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 2(1)	<p>(1) Omit section 2(1)(b).</p> <p>(2) If it can be confirmed that the Third Church of Christ, Scientist, Brisbane no longer exists, omit section 2(1)(c).</p> <p>(3) Renumber paragraph (d) as paragraph (b).</p> <p>(4) Omit— 'Second Church of Christ, Scientist, Brisbane,' in the body of the section (both occurrences).</p> <p>(5) If it can be confirmed that it no longer exists, omit— 'Third Church of Christ, Scientist, Brisbane,' in the body of the section (both occurrences).</p> <p>(6) Capitalise 'manual'.</p>
5-5	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 2(1A)	Omit. Declare it to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
5-6	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 3(1)	<p>(1) Omit— 'Second Church of Christ, Scientist, Brisbane,' (both occurrences).</p> <p>(2) If it can be confirmed that it no longer exists, omit— 'Third Church of Christ, Scientist, Brisbane,' (both occurrences).</p>

Rec	Act	Provision	Recommendation
5-7	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 4	<p>(1) Omit— ‘body of association’.</p> <p>Insert— ‘body or association’.</p> <p>(2) Omit— ‘stated section 5’.</p> <p>Insert— ‘stated in section 5’.</p> <p>(3) Omit— ‘with the same powers, authorities, and privileges and subject to the same duties and liabilities mutatis mutandis as those provided in this Act in respect of the churches mentioned in section 2’.</p> <p>(4) Capitalise ‘the’ in— ‘the Mother Church’; and ‘the First Church of Christ, Scientist, in Boston, Massachusetts’.</p> <p>(5) Capitalise ‘manual’.</p>
5-8	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 5(1)(b)	<p>Capitalise ‘the’ in— ‘the Mother Church’; and ‘the First Church of Christ, Scientist, in Boston, Massachusetts’.</p>
5-9	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 7A	<p>Omit.</p> <p>Declare it to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.</p>
5-10	<i>Churches of Christ, Scientist, Incorporation Act 1964 (Qld)</i>	Section 7B(3)(a)	<p>Omit— ‘, other than the Second Church of Christ, Scientist, Brisbane’.</p>

Rec	Act	Provision	Recommendation
5-11	<i>Churches of Christ, Scientist, Incorporation Act 1964</i> (Qld)	Schedule	In the heading, capitalise 'the' in— 'the Mother Church'; and 'the First Church of Christ, Scientist'.

Chapter 6

Presbyterian Church of Australia

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INTRODUCTION

6.1 The terms of reference require the Commission to review the following Acts relating to the Presbyterian Church of Queensland:

- *Presbyterian Church of Australia Act 1900 (Qld)*; and
- *Presbyterian Church of Australia Act 1971 (Qld)*.

6.2 They also require the Commission to review the *Ann Street Presbyterian Church Act 1889 (Qld)*.

PRESBYTERIAN CHURCH OF AUSTRALIA ACT 1900 (QLD)

Background

6.3 The 'Presbyterian Church of Australia' was formally constituted on 24 July 1901 by the union of the Presbyterian Churches of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia.¹ Prior to that time, the

¹

The Presbyterian Church of Australia, 'Introduction' in *Constitution, Procedure and Practice* (Code Committee of the General Assembly of Australia, 2011) i. The Presbyterian Church of New South Wales is now called the Presbyterian Church of Australia in the State of New South Wales, and the Presbyterian Church of Western Australia is now known as the Presbyterian Church in Western Australia: see, respectively, Presbyterian Church of Australia in the state of New South Wales, *Home* (2013) <<http://pcnsw.org.au/>>; Presbyterian Church in Western Australia, *Home* <<http://www.pcwa.org.au/>>.

individual State Presbyterian Churches were not united as a single church.²

6.4 In 1886, the State Churches were ‘federated’, although there were differences in the bases of union of each of those State Churches.³ In June 1900, the Federal Assembly of the State Presbyterian Churches of New South Wales, Victoria, Queensland, South Australia and Tasmania agreed upon a scheme of union for the formation of a single church.⁴ Some time later that year, the Presbyterian Church of Western Australia, which had formerly been a presbytery of the Victorian Church, was constituted and also agreed to join the union.⁵

6.5 Under this original scheme of union, the State Churches agreed to unite to form one church, the Presbyterian Church of Australia, with a common basis of union,⁶ and to give certain responsibilities regarding doctrine, worship and discipline, conduct of missions, theological training, and the reception of ministers from other churches to the General Assembly of that Church, while otherwise retaining their individual autonomy.⁷

6.6 Although the scheme of union provided for the formation of a common church, it was intended that the State Churches would retain control of their property, and that such property would continue to be held on the same trusts but subject to the common basis of union.⁸

6.7 This required legislative sanction. To the extent that an alteration in the statement of the fundamental doctrines of any of the State Presbyterian Churches was brought about by the union, it may have interfered with the trusts on which certain property was held by or for those State Churches.⁹

² Presbyterian Church of Queensland, ‘Preface to First Edition’ in *Standing Orders and Rules and Forms of Procedure* (7th ed, 2011). The Presbyterian Church of Queensland had been founded, with the formation of a synod, in 1863: Presbyterian Church of Queensland, ‘The Church’ in *Standing Orders and Rules and Forms of Procedure* (7th ed, 2011) documents 3 of 22.

³ Legislative Council Select Committee, Parliament of Queensland, *Presbyterian Church of Australia Bill* (1900) 1964 (evidence of Rev P Robertson).

⁴ *Ibid.*

⁵ See Queensland, *Parliamentary Debates*, Legislative Assembly, 20 December 1900, 2830, 2831 (A Rutledge, Attorney-General); Legislative Council, 21 December 1900, 2844 (JG Drake, Postmaster-General).

⁶ The expression ‘basis of union’, in the context of Presbyterian churches, refers to ‘a formal statement of the fundamental doctrines which uniting churches agree to profess’: *A-G (NSW) v Grant* (1976) 135 CLR 587, 604 (Gibbs J).

⁷ See *Presbyterian Church of Australia Act 1900* (Qld) sch, Articles of Agreement cll IV, XI; The Presbyterian Church of Australia, *An Introduction to the Presbyterian Church of Australia* (Code Committee of the General Assembly of the Presbyterian Church of Australia, 1st ed, 2004) 4.

⁸ Legislative Council Select Committee, Parliament of Queensland, *Presbyterian Church of Australia Bill* (1900) 1963, 1964 (evidence of JG McGregor and Rev P Robertson); Queensland, *Parliamentary Debates*, Legislative Council, 27 November 1900, 2134 (JG Drake, Postmaster-General).

⁹ See Legislative Council Select Committee, Parliament of Queensland, *Presbyterian Church of Australia Bill* (1900) 1964 (evidence of Rev P Robertson). It has been observed that, in a later decision of the House of Lords in *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515, it was held that:

the property of a church was maintained in trust on terms which included the fundamental tenets of the church and that such property could not be diverted or applied to purposes of another association (resulting from a union of churches) if the fundamental tenets or purposes differed: *Uniting Church in Australia Property Trust (NSW) v Vincent* [1994] NSWCA 328, 10 (Kirby P).

6.8 In Queensland, the *Presbyterian Church of Australia Act 1900* (Qld) was passed to give legal recognition to the original scheme of union by which the Presbyterian Church of Australia was formed.¹⁰

6.9 Apart from the Preamble and the Schedule, the *Presbyterian Church of Australia Act 1900* (Qld) is comprised of only one substantive provision.

Section 1: Adoption of Basis of Union and Articles of Agreement

6.10 Section 1 of the Act provides that, from and after 7 November 1900, the Basis of Union and Articles of Agreement set out in the Schedule 'shall have the full force and effect of law'.

6.11 It further provides that, except as provided in the Basis of Union and Articles of Agreement, nothing done in accordance with those documents divests the Presbyterian Church of Queensland (or the Presbyterian Churches of the other States), or any congregation, body or person, of any property situated within, or subject to the jurisdiction of, the State of Queensland which is or shall be held in trust for any of those Churches or any congregation or body connected with those Churches.

6.12 To the extent that the Basis of Union and Articles of Agreement 'worked a change in [the] fundamental doctrine or tenets of belief' of the church in Queensland, the adoption of the scheme of union in this Act altered the terms of the trusts on which property of, or held for, or in connection with, the Presbyterian Church of Queensland was held.¹¹

6.13 As explained below, in 1977, the Congregational Church, the Methodist Church of Australasia and certain congregations of the Presbyterian Church of Australia united to form the Uniting Church in Australia.¹² However, the Presbyterian Church of Australia continues to exist,¹³ and the Presbyterian congregations that did not enter the union to form the Uniting Church continue to function under the original scheme of union by which the Presbyterian Church of Australia was formed in 1901.¹⁴

See also the discussion of that case in *A-G (NSW) v Grant* (1976) 135 CLR 587, 600–3 (Gibbs J); and *Bailey v The Uniting Church in Australia Property Trust (Qld)* [1984] 1 Qd R 42, 48 (McPherson J).

¹⁰ In the other States, see *Presbyterian Church of Australia Act 1900* (NSW); *Presbyterian Church of South Australia Act 1899* (SA) s 7; *Presbyterian Church of Australia Act 1901* (Tas); *Presbyterian Church of Australia Act 1900* (Vic); *Presbyterian Church of Australia Act 1901* (WA).

¹¹ *Bailey v The Uniting Church in Australia Property Trust (Qld)* [1984] 1 Qd R 42, 50 (McPherson J; Sheahan J agreeing).

¹² See [6.44] ff below.

¹³ The Presbyterian Church of Australia is a 'live and "continuing" church': *Bailey v The Uniting Church in Australia Property Trust (Qld)* [1984] 1 Qd R 42, 44 (Sheahan J).

¹⁴ See *A-G (NSW) v Grant* (1976) 135 CLR 587, 598 (Gibbs J); *Bailey v The Uniting Church in Australia Property Trust (Qld)* [1984] 1 Qd R 42, 51 (McPherson J). See also *Presbyterian Church of Australia Act 1971* (Qld) sch, Pt III s 18(b); *Uniting Church in Australia Act 1977* (Qld) s 5 (definition of 'the Presbyterian Church continuing to function').

6.14 Accordingly, section 1 of the *Presbyterian Church of Australia Act 1900* (Qld) continues to be relevant to the Presbyterian Church of Australia, and to the property in Queensland that is held in trust for the church.

6.15 The Presbyterian Church of Queensland has advised the Commission that the *Presbyterian Church of Australia Act 1900* (Qld) should be retained. It has also suggested, however, that to modernise and simplify the Act, it might be amended by splitting section 1 into two subsections and reversing the order of sections 1 and 2.

The Commission's view

6.16 In the Commission's view, the following minor amendments should be made to sections 1 and 2 of the *Presbyterian Church of Australia Act 1900* (Qld).

6.17 To modernise the Act, the order of sections 1 and 2 should be reversed, so that section 2, which provides for the short title of the Act, appears as the first section of the Act.

6.18 Further, to improve the clarity of the Act, the existing section 1 (which should be renumbered as section 2) should be split into two subsections: the first, to provide for the effect of the Basis of Union and Articles of Agreement (ending with the words 'full force and effect of law'); and the second, to provide for the balance of the existing section 1.

Schedule: The scheme of union

6.19 The scheme of union set out in the Schedule to the Act comprises:

- a short Preamble;
- a Basis of Union, which principally declares matters of doctrine; and
- Articles of Agreement, which declare matters of administration.¹⁵

6.20 In particular, the Basis of Union introduced a 'declaratory statement'¹⁶ in relation to the Westminster Confession of Faith that previously had not applied to the Presbyterian Church of Queensland.¹⁷

6.21 The Articles of Agreement provide that there is to be a General Assembly of the Presbyterian Church of Australia, with responsibility for certain limited matters, and that the General Assemblies of the constituent State Churches (including the Presbyterian Church of Queensland) are to retain their autonomy.¹⁸

¹⁵ See the description of the Basis of Union and the Articles of Agreement in The Presbyterian Church of Australia, 'Foreword' in *Constitution, Procedure and Practice* (Code Committee of the General Assembly of Australia, 2011) 1.

¹⁶ *Presbyterian Church of Australia Act 1900* (Qld) sch, Basis of Union cl II.

¹⁷ See Legislative Council Select Committee, Parliament of Queensland, *Presbyterian Church of Australia Bill* (1900) 1964 (evidence of Rev P Robertson).

¹⁸ See *Presbyterian Church of Australia Act 1900* (Qld) sch, Articles of Agreement cl I, XI.

6.22 The scheme of union also provides for the way in which revisions or alterations may be made to the Basis of Union or the Articles of Agreement.¹⁹

6.23 Since the passing of the Act, the text of the original scheme of union appears to have been amended from time to time by the General Assembly.²⁰ As a result, the text of the scheme of union that is set out in the Schedule to the *Presbyterian Church of Australia Act 1900* (Qld) is no longer in identical terms to the scheme of union as it presently applies.

6.24 The Presbyterian Church of Queensland has expressed the view that the references to the 'Basis of Union and Articles of Agreement' in the *Presbyterian Church of Australia Act 1900* (Qld) should therefore be changed to refer to the Basis of Union and Articles of Agreement 'as amended from time to time'.

The Commission's view

6.25 Given that the scheme of union with which the *Presbyterian Church of Australia Act 1900* (Qld) is concerned has been amended since the Act was passed, and might be further amended in the future, the Commission is of the view that the references in the Preamble to the Act and in existing section 1 of the Act to the 'Basis of Union and Articles of Agreement' should be changed to refer to the Basis of Union and Articles of Agreement 'as amended from time to time'.²¹ This will provide greater clarity.

PRESBYTERIAN CHURCH OF AUSTRALIA ACT 1971 (QLD)

Background

6.26 Subsequent to the formation of the Presbyterian Church of Australia, members of the Presbyterian, Methodist and Congregational Churches in Australia entered into discussions about forming a union between their churches²² and, in 1957, they established a Joint Commission on Church Union to prepare a proposed basis of union.²³

6.27 In order to give the Presbyterian Church of Australia the power to achieve such a union with those other Churches, and to provide for other changes in the government of the Presbyterian Church of Australia,²⁴ legislation was passed in the

¹⁹ *Presbyterian Church of Australia Act 1900* (Qld) sch, Basis of Union cl III and Articles of Agreement cl XIII.

²⁰ See *A-G (NSW) v Grant* (1976) 135 CLR 587, 592 (Gibbs J); *Uniting Church in Australia Property Trust (NSW) v Monsen* [1978] 1 NSWLR 575, 579 (Rath J). See the scheme of union set out in *The Presbyterian Church of Australia, Constitution, Procedure and Practice* (Code Committee of the General Assembly of Australia, 2011) 3–16.

²¹ *Acts Interpretation Act 1954* (Qld) sch 1 defines 'amend', for an instrument or provision of an instrument, to include 'alter or vary'.

²² The possibility of union between these three Churches 'had a long history', reaching back as far as 1912: *Uniting Church in Australia Property Trust (NSW) v Vincent* [1994] NSWCA 328, 12 (Kirby P).

²³ See *A-G (NSW) v Grant* (1976) 135 CLR 587, 593 (Gibbs J); *Uniting Church in Australia Property Trust (NSW) v Vincent* [1994] NSWCA 328, 12 (Kirby P).

²⁴ See *Uniting Church in Australia Property Trust (NSW) v Vincent* [1994] NSWCA 328, 12 (Kirby P).

Australian States in 1970 and 1971, including the *Presbyterian Church of Australia Act 1971* (Qld).²⁵

6.28 The Schedule to the *Presbyterian Church of Australia Act 1971* (Qld) includes a Basis of Union in three parts:

- Part I (Constitution) deals with matters of doctrine;
- Part II (Government) deals with administration and government; and
- Part III (Union with other churches) empowers the General Assembly of the Presbyterian Church of Australia to negotiate with 'other branches of the Christian church' with a view to entering into union with any of them and to resolve to enter into such a union.

Section 2 and Parts I and II of the Schedule: Union of State Presbyterian Churches

6.29 Section 2 of the *Presbyterian Church of Australia Act 1971* (Qld) provides a process for the implementation of the whole of the Basis of Union (that is, Parts I, II and III) set out in the Schedule to the Act as it relates to property held by, or in trust for, the Presbyterian Church of Queensland.

6.30 It provides that, upon certain events taking place (including the publication in the gazette of a notice of certain matters),²⁶ all interests in property held by or in trust for the Presbyterian Church of Queensland, or in connection with that Church, shall be held for the same purposes but subject to the Basis of Union in the Schedule to the Act.

6.31 Parts I and II of the new Basis of Union differ from the terms of the original scheme of union contained in the *Presbyterian Church of Australia Act 1900* (Qld). In particular, whereas the powers of the General Assembly under the original scheme of union were limited to particular matters, Part II of the new Basis of Union gives the General Assembly functions 'supreme with regard to ... the government of the Church'.²⁷ Together with other changes, this was intended to 'complete the union of the six State Presbyterian Churches by bringing them all within a single Presbyterian structure, thus constituting a corporate union of the several churches'.²⁸ The implementation of Parts I and II of the Basis of Union would have

²⁵ In the other States, see *Presbyterian Church of Australia Act 1971* (NSW); *Presbyterian Trusts Act 1971* (SA); *Presbyterian Church of Australia Act 1971* (Tas); *Presbyterian Church of Australia Act 1971* (Vic); *Presbyterian Church of Australia Act 1970* (WA). The New South Wales Act was later amended by the *Presbyterian Church of Australia (Amendment) Act 1972* (NSW).

²⁶ *Presbyterian Church of Australia Act 1971* (Qld) s 2(c). That section provides for the publication in the gazette of a notice, signed by the moderator of the General Assembly of the Presbyterian Church of Queensland, that: the Presbyterian Church of Australia and each of the State Presbyterian Churches have agreed to unite upon the basis of the Basis of Union set out in the Schedule to the Act, being a substitution of the original scheme of union set out in the Schedule to the *Presbyterian Church of Australia Act 1900* (Qld); and that Acts have been passed by the Parliaments of each of the States enabling effect to be given to the new Basis of Union.

²⁷ *Presbyterian Church of Australia Act 1971* (Qld) sch, Pt II cl 8(1).

²⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 26 March 1971, 3281 (PR Delamothe, Minister for Justice).

provided a more centralised governance structure for the Presbyterian Church of Australia.

6.32 However, although the Act has been in force for over 40 years, steps have never been taken under section 2 to implement Parts I and II of the Basis of Union contained in the Schedule to the Act. As mentioned below, only Part III of the Basis of Union has been implemented, and that was done by the separate process provided for in section 3 for the implementation of that Part without the concurrent implementation of Parts I and II.

6.33 The Presbyterian Church of Queensland has advised that it has no objection to the repeal of section 2 and Parts I and II of the Schedule to the Act.

6.34 That approach has been taken in New South Wales, with the repeal in 1995 of the equivalent provisions of the legislation in that State on the basis that they were 'superfluous'.²⁹

Section 3 and Part III of the Schedule: Union with other churches

6.35 Section 3 of the *Presbyterian Church of Australia Act 1971* (Qld) deals with the implementation of Part III of the Basis of Union set out in the Schedule to the Act as it relates to property held by, or in trust for, the Presbyterian Church of Queensland, without the adoption of the other two parts of the Basis of Union. As mentioned earlier, Part III of the Basis of Union provides a process by which the Presbyterian Church of Australia may enter into a union with other Christian churches.

6.36 Section 3(1) provides that, if, 'at any time prior to the adoption pursuant to section 2 of the whole basis of union set forth in the schedule', certain events occur (including the publication in the gazette of a notice of particular matters),³⁰ all interests in property held by or in trust for the Presbyterian Church of Queensland, or in connection with that Church, shall be held for the same purposes and upon the same trusts but subject to the provisions of Part III of the Basis of Union.³¹ In *A-G (NSW) v Grant*, the High Court held that the effect of the equivalent provision in New South Wales is that:³²

²⁹ New South Wales, *Parliamentary Debates*, Legislative Council, 16 November 1995, 3320 (JW Shaw, Attorney General and Minister for Industrial Relations). See *Presbyterian Church of Australia Act 1971* (NSW) s 3, sch Pts I–II, repealed by *Presbyterian Church (Corporations) Act 1995* (NSW) s 23.

³⁰ *Presbyterian Church of Australia Act 1971* (Qld) s 3(1)(c). That section provides for the publication in the gazette of a notice, signed by the moderator of the General Assembly of the Presbyterian Church of Queensland, that: the Presbyterian Church of Australia and each of the State Presbyterian Churches have agreed to implement Part III of the Basis of Union set out in the Schedule to the Act; and that Acts have been passed by the Parliaments of each of the States enabling effect to be given to Part III of the Basis of Union without the necessity of implementing the Basis of Union as a whole.

³¹ *Presbyterian Church of Australia Act 1971* (Qld) s 3(1) is to apply 'without prejudice to the subsequent exercise of the power contained in section 2'.

³² (1976) 135 CLR 587, 606–7 (Gibbs J; Stephen, Mason and Jacobs JJ agreeing), in relation to the *Presbyterian Church of Australia Act 1971* (NSW) s 4(2).

if there is any conflict between the provisions of the 1900 Basis of Union and those of Pt III of the new basis of union contained in the Schedule to the 1971 Act the latter must prevail for the purpose of determining the trusts on which the property of the Presbyterian Church of Australia, and of its associated bodies and funds, is held.

6.37 Section 3(2) provides for the way in which certain references in Part III of the Basis of Union in the Schedule are to be read or applied for the purposes of section 3. For instance, a reference to the 'synods' is deemed to be a reference to the State General Assemblies or, where the context so requires it, to the State Presbyterian Churches.³³

6.38 On 11 December 1971, a notice pursuant to section 3(1) of the *Presbyterian Church of Australia Act 1971* (Qld) was published in the gazette.³⁴ Consequently, section 3 and Part III of the Schedule to that Act came into operation. The same approach was taken in most of the other States, whereby Part III of the Basis of Union (but not Parts I and II) was implemented.³⁵

6.39 Part III of the Basis of Union empowers the General Assembly of the Presbyterian Church of Australia to enter into union with 'other branches of the Christian church', provided certain steps, set out in sections 15 to 17, are taken.³⁶ In particular, the proposed basis of union with any such other church or churches is to be approved by a majority of the General Assemblies of the State Presbyterian Churches, at least three-fifths of the presbyteries of the whole church, and three-fifths of the members present when the final vote of the General Assembly of the Presbyterian Church of Australia is taken.³⁷

6.40 Part III of the Basis of Union additionally provides for the way in which Church property is to be dealt with if the General Assembly resolves to enter a union but certain communicants of congregations do not wish to enter the union.³⁸ In particular, section 18 provides that the General Assembly is to establish a commission, which is given certain powers under that section to determine the division of church property, and provides for the recognition of 'continuing congregations' of the Presbyterian Church of Australia, who do not wish to join the union and will instead continue to function in accordance with the original scheme of union of 1901, as amended.³⁹

³³ *Presbyterian Church of Australia Act 1971* (Qld) s 3(2)(b). 'Synods' are provided for in *Presbyterian Church of Australia Act 1971* (Qld) sch, Pt II (Government) cl 9. That clause would not apply, however, unless Pt II of the Basis of Union were implemented pursuant to s 2 of the Act.

³⁴ JC Allan, 'Presbyterian Church of Australia Act 1971' in Queensland, *Queensland Government Gazette*, No 67, 11 December 1971, 1713.

³⁵ See *Uniting Church in Australia Property Trust (NSW) v Monsen* [1978] 1 NSWLR 575, 581, 583 (Rath J); *Uniting Church in Australia Property Trust (NSW) v Vincent* [1994] NSWCA 328, 33 (Sheller JA).

³⁶ *Presbyterian Church of Australia Act 1971* (Qld) sch, Part III (Union with other churches) ss 15–17.

³⁷ *Presbyterian Church of Australia Act 1971* (Qld) s 3(2)(b), sch, Part III s 15.

³⁸ *Presbyterian Church of Australia Act 1971* (Qld) sch, Part III s 18.

³⁹ *Presbyterian Church of Australia Act 1971* (Qld) s 3(2)(e), sch, Part III s 18(a)–(b). See also, as to the commission's powers, s 18(b), (c)(ii), (d).

6.41 A 'continuing congregation' is recognised where, in any case, at least one-third of the communicants of a congregation, prior to the final vote of the General Assembly approving the union, have recorded votes indicating their desire to continue in membership of the Presbyterian Church of Australia.⁴⁰

6.42 Under section 18(b), those continuing congregations are entitled to retain the 'congregational property', unless the commission appointed by the General Assembly 'shall for special reasons otherwise determine', in which case the commission is required 'to ensure that what it deems to be adequate and suitable congregational property is provided'. Further, section 18(d) empowers the commission 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 General Assemblies or State Presbyterian Churches shall 'for the efficient functioning' of the continuing church be retained by, or for the purposes of, that continuing church.⁴¹

6.43 It was necessary for the adoption of the new Basis of Union to be given effect by legislation since it would be a variation of the original scheme of union and had the potential to alter the fundamental tenets of the Church. This would have the consequence that property held on trust for the purposes of the Church might not be capable of being held for the purposes as altered by the new Basis of Union. This was particularly so in relation to the adoption of Part III of the Basis of Union pursuant to which the Church might form a union, under a further and different basis of union, with other churches. This was explained in *Bailey v The Uniting Church in Australia Property Trust (Qld)*:⁴²

The practical problems involved in effecting such a union with other churches were considerable. Not the least of them was presented by the decision of the House of Lords in *General Assembly of Free Church of Scotland v Lord Overtoun* [1904] AC 515 the effect of which can be briefly stated as being that, where property of an association such as a church is held in trust on terms or for purposes which include fundamental tenets of faith or belief, such property cannot be diverted or applied to the purposes of another association resulting from a union of churches if the fundamental tenets or purposes of the united association differ from those of the former. ... in the absence of a power to alter the fundamental tenets, or of the unlikely event of a unanimous vote of all members of the association agreeing to such an alteration, the rule established by that decision is that a dissenting minority who continue to adhere to the original tenets or purposes are entitled to claim the property that is bound by or devoted to those original tenets or purposes. (emphasis added)

6.44 In the event, steps were taken under section 3 of the Act (and the equivalent provisions in the legislation in the other States) to implement Part III of the Basis of Union, without the adoption of Parts I and II of the Basis of Union. This eventually led, in 1977, to the union of most of the congregations of the

⁴⁰ *Presbyterian Church of Australia Act 1971* (Qld) sch, Part III s 18(b).

⁴¹ *Presbyterian Church of Australia Act 1971* (Qld) s 3(2)(b), sch, Part III s 18(d).

⁴² [1984] 1 Qd R 42, 48 (McPherson J; Sheahan J agreeing). See also at 50.

Presbyterian Church of Australia with the Methodist and Congregational Churches in Australia to form the Uniting Church in Australia.⁴³

6.45 Not all of the congregations of the Presbyterian Church of Australia entered into that union, however, and those congregations that did not join continue to function as the Presbyterian Church of Australia.⁴⁴

6.46 While Part III conferred the necessary powers for the Presbyterian Church to enter into the union that resulted in the formation of the Uniting Church in Australia, its provisions are framed in general terms, referring to the possibility of union with 'other branches of the Christian church' rather than to the Methodist and Congregational Churches specifically.⁴⁵ Part III is therefore capable of continuing operation so that the present Presbyterian Church of Australia might resolve to enter into union with other churches at some time in the future.

6.47 The Presbyterian Church of Queensland has advised that sections 3–5 and Part III of the Schedule to the Act should be retained, but that it has no objection to the relocation of those provisions to the *Presbyterian Church of Australia Act 1900* (Qld), thereby enabling the *Presbyterian Church of Australia Act 1971* (Qld) to be repealed.

Consolidation with the *Presbyterian Church of Australia Act 1900* (Qld)

6.48 In light of what has (and has not) transpired since its introduction, the *Presbyterian Church of Australia Act 1971* (Qld) now has only a limited relevance. This raises the possibility that that Act might be repealed and those of its provisions that remain relevant incorporated into the *Presbyterian Church of Australia Act 1900* (Qld).

6.49 In its submission, the Presbyterian Church of Queensland endorsed such an approach and provided a detailed outline of how the two Acts might be consolidated. In particular, as noted above, it submitted that sections 3–5 and Part III of the Schedule to the *Presbyterian Church of Australia Act 1971* (Qld) should be incorporated into the *Presbyterian Church of Australia Act 1900* (Qld). It also noted a number of consequential amendments that might be necessary to give effect to this consolidation.

The Commission's view

6.50 Given that steps have never been taken under section 2 of the *Presbyterian Church of Australia Act 1971* (Qld) to implement Parts I and II of the Basis of Union in the Schedule to that Act, the Commission is of the view that those parts of the Act serve no further purpose and should be repealed.

43 See Chapter 9 in relation to the Uniting Church in Australia.

44 See [6.13] above.

45 *Presbyterian Church of Australia Act 1971* (Qld) sch, Pt III s 15.

6.51 Further, while sections 3–5 of the *Presbyterian Church of Australia Act 1971* (Qld) and Part III of the Schedule to that Act continue to serve a purpose, they should be relocated to the *Presbyterian Church of Australia Act 1900* (Qld), which remains the foundational statute for the Church in Queensland. This will enable the *Presbyterian Church of Australia Act 1971* (Qld) to be repealed.

6.52 Particular care will be required to ensure that the consolidated version of the *Presbyterian Church of Australia Act 1900* (Qld) incorporates the relevant provisions of the *Presbyterian Church of Australia Act 1971* (Qld) accurately and with clarity, and in a way that preserves the distinction between the core provisions of the principal Act and the provisions drawn from the 1971 Act that will augment it. To this end, and having regard to the detailed outline in the submission of the Presbyterian Church of Queensland, the Commission considers that a number of consequential amendments to the *Presbyterian Church of Australia Act 1900* (Qld) should be made including, in particular, amendments to:

- reflect, in the long title to the Act, the purpose of the provisions relocated from the *Presbyterian Church of Australia Act 1971* (Qld);
- incorporate the relevant parts of the Preamble to the *Presbyterian Church of Australia Act 1971* (Qld) — with the necessary changes to omit the reference to the enlargement of the federal union of the State Churches, which has never occurred, and to avoid unnecessary duplication with the existing Preamble to the *Presbyterian Church of Australia Act 1900* (Qld);
- omit the references in the relocated provisions to section 2 of the *Presbyterian Church of Australia Act 1971* (Qld) and Parts I and II of the Schedule to that Act, which are to be omitted;
- insert Part headings to keep the provisions being carried over from the *Presbyterian Church of Australia Act 1971* (Qld) conceptually distinct from the existing provisions of the *Presbyterian Church of Australia Act 1900* (Qld); and
- rename the existing Schedule to the *Presbyterian Church of Australia Act 1900* (Qld) and what will be a new schedule inserted in that Act from Part III of the Schedule to the *Presbyterian Church of Australia Act 1971* (Qld).

6.53 The consolidation of these two Acts also presents the opportunity to make a limited number of other minor amendments to modernise the drafting of the *Presbyterian Church of Australia Act 1900* (Qld), in particular, by numbering the paragraphs of the Preamble and including a reference to the present names of the Churches in New South Wales and Western Australia.⁴⁶

6.54 These changes are detailed in the recommendations at the end of this chapter.

46

See n 1 above.

ANN STREET PRESBYTERIAN CHURCH ACT 1889 (QLD)

Background

6.55 In or about 1858, the congregation now known as the Ann Street Presbyterian Church (referred to in the Act as the ‘Church’) applied to the Government of the Colony of New South Wales for a grant of certain lands.⁴⁷

6.56 Ultimately, four adjoining allotments of land⁴⁸ were granted by deeds of grant dated 7 September 1861 on the following trusts:

- Deed of Grant No 2847, granting allotments 10 and 11 on trust for the erection of a church, under the superintendence of the Synod of Australia, in conformity with the provisions of the *Scotch Presbyterian Church Temporalities Act 1837* (NSW), and for no other purpose whatsoever;
- Deed of Grant No 2848, granting allotment 9 on trust for the erection of a schoolhouse, under the superintendence of the Synod of Australia, and for no other purpose whatsoever; and
- Deed of Grant No 2849, granting allotment 8 on trust for the appropriation of the land as the site of a dwelling house, garden and other appurtenances for the clergyman duly appointed to officiate in the Church under the superintendence of the Synod of Australia, in conformity with the provisions of the *Scotch Presbyterian Church Temporalities Act 1837* (NSW), and for no other purpose whatsoever.

6.57 The four allotments (the ‘Creek Street lands’) were situated in Brisbane on the southern side of Creek Street, running from the Ann Street corner through to the Adelaide Street corner.⁴⁹

6.58 By the time the allotments were granted, however, the Church had built the current Ann Street Presbyterian Church on other land at 145 Ann Street, together with a minister’s dwelling.⁵⁰

6.59 Accordingly, the Creek Street lands were no longer required for their original purposes. Instead, the trustees leased the lands and applied the income and profits for the purposes of the Church.⁵¹

⁴⁷ *Ann Street Presbyterian Church Act 1889* (Qld) Preamble.

⁴⁸ The Preamble to the *Ann Street Presbyterian Church Act 1889* (Qld) describes the allotments as allotments 8, 9, 10 and 11 of section 26, situated in the County of Stanley, Parish of North Brisbane and Town of Brisbane.

⁴⁹ See Department of Natural Resources and Mines (Qld), Certificate of Title vol 1623 folio 30 (Title Reference 11623030).

⁵⁰ The land at 145 Ann Street, Brisbane, was purchased in 1854 and construction was completed in 1858: Ann Street Presbyterian Church, *History of the Ann Street Presbyterian Church* (2002) <<http://www.annstreetpcq.org.au/churchhistory.html>>.

⁵¹ *Ann Street Presbyterian Church Act 1889* (Qld) Preamble. See also Legislative Assembly Select Committee, Parliament of Queensland, *Ann Street Presbyterian Church Bill* (1888) 931; RW Pilkington OAM, *The History of Ann Street Presbyterian Church 1858–2006* (2009) 176.

6.60 The Preamble to the Act recites that the deeds of grant had been drafted in the belief that the Ann Street Presbyterian Church was subject to the spiritual jurisdiction of the Synod of Australia, which represented the established Church of Scotland. However, the Ann Street Presbyterian Church had instead been connected to the Synod of Eastern Australia. That Synod had ceased to exist as a body in 1855 and the congregations in connection with it became the Presbyterian Church of Queensland, although each congregation retained control and ownership of its own property.⁵² The Ann Street Presbyterian Church was therefore never subject to the spiritual jurisdiction of the Synod of Australia.⁵³

6.61 In 1862, Rev Charles Ogg, on behalf of the Church, wrote to the government seeking to rectify the mistake in the trust deeds. However, the Church could not at that time afford to apply for the passage of a Bill through Parliament for that purpose.⁵⁴

6.62 It was not until 1888 that a petition was finally brought for the Ann Street Presbyterian Church Bill. This was prompted by the discovery that there was no power to appoint new trustees in place of those who had died, resigned, or left the Church, and by the desire to sell the land, which was now considered unsuitable, and to use the proceeds to purchase another site.⁵⁵

6.63 The general objects of the Bill were:⁵⁶

- to vest the Creek Street lands in new trustees, but freed and absolutely discharged from the trusts as limited by the Deeds of Grant;
- to enable the trustees to sell, mortgage or lease the lands and to apply the moneys arising from any sale or mortgage for the purchase of a more convenient site and for the erection thereon of a church, school-house and minister's dwelling-house; and
- to provide for the succession of trustees.

Resumption of lands by the Brisbane City Council

6.64 In 1925, the Creek Street lands were resumed by the Brisbane City Council, which paid the trustees compensation of £35,791.1s.10d.⁵⁷

⁵² Queensland, *Parliamentary Debates*, Legislative Assembly, 27 September 1889, 1881 (Sir Horace Tozer); Legislative Assembly Select Committee, Parliament of Queensland, *Ann Street Presbyterian Church Bill* (1888) 943–5 (evidence of Rev C Ogg).

⁵³ *Ann Street Presbyterian Church Act 1889* (Qld) Preamble.

⁵⁴ Queensland, *Parliamentary Debates*, Legislative Assembly, 25 July 1889, 809 (RR Jones); Legislative Assembly Select Committee, Parliament of Queensland, *Ann Street Presbyterian Church Bill* (1888) 943 (evidence of Rev C Ogg).

⁵⁵ Queensland, *Parliamentary Debates*, Legislative Assembly, 25 July 1889, 809 (RR Jones).

⁵⁶ See Legislative Assembly Select Committee, Parliament of Queensland, *Ann Street Presbyterian Church Bill* (1888) 932.

⁵⁷ Department of Natural Resources and Mines (Qld), Certificate of Title vol 1623 folio 30 (Title Reference 11623030); RW Pilkington OAM, *The History of Ann Street Presbyterian Church 1858–2006* (2009) 107–8. The lands were resumed under the *City of Brisbane Improvement Act 1916* (Qld).

Court sanction of scheme in relation to compensation proceeds

6.65 Following the resumption of the Creek Street lands, the trustees applied to the Supreme Court for the sanction of a scheme in relation to the trust. On 29 October 1925, the Supreme Court ordered that, after paying the costs in relation to that application, the trustees were to apply the funds in the following manner:⁵⁸

- to apply the sums of £2,547.1s.10d and £900, together with the amount payable by the Council by way of interest from 19 February 1925, as if they had been income and profits derived from the said lands, namely, ‘to and for such uses and purposes of the Ann Street Presbyterian Church as defined in “The Ann Street Presbyterian Church Act of 1889” as the said Church shall in its discretion think fit to direct’; and
- to invest the residue of the sum of £35,791.1s.10d in any securities authorised by law for the investment of trust funds upon trust for the purposes of the Church, and to apply the *income* of the investments as if the same had been income and profits derived from the said lands, namely, ‘to and for such uses and purposes of the said Church as the said Church shall in its discretion think fit to direct’, and with the ‘power also from time to time to apply the whole or any part of the *capital monies* of such investments for all or any of the purposes set forth in section 8 of ... “The Ann Street Presbyterian Church Act of 1889”⁵⁹ as the said Church shall in its discretion think fit to direct’ (emphasis added).

Section 1 and related provisions: Lands vested in new trustees

6.66 Section 1 of the *Ann Street Presbyterian Church Act 1889* (Qld) Act vests the Creek Street lands in the new trustees,⁶⁰ upon trust for the purposes of the Ann Street Presbyterian Church, but otherwise freed and absolutely discharged from the trusts contained and declared in the deeds of grant. As such, the vesting of these lands occurred when the Act commenced on 13 November 1889.

6.67 The *Ann Street Presbyterian Church Act 1889* (Qld) also contains a number of provisions that relate to the specific allotments vested under section 1 and which were resumed in 1925, namely:

- section 3 (Trustees may sell or mortgage);
- section 4 (How sales may be made—trustees may convey);
- section 5 (Mortgage may contain power of sale etc);
- section 6 (Trustees may lease);

⁵⁸ *Re Deeds of Grant Nos 2847, 2848 and 2849 for the purposes of ‘The Ann Street Presbyterian Church’ and Re ‘The Ann Street Presbyterian Church Act of 1889’* (Unreported, Supreme Court of Queensland, 29 October 1925) [2], reproduced in RW Pilkington OAM, *The History of Ann Street Presbyterian Church 1858–2006* (2009) 126–9.

⁵⁹ *Ann Street Presbyterian Church Act 1889* (Qld) s 8 is set out at [6.74] below.

⁶⁰ *Ann Street Presbyterian Church Act 1889* (Qld) s 2 defines who are the trustees.

- section 7 (Leases may be surrendered); and
- section 9 (Application of income and profits), which provides for how any income and profits arising from the lands *until their sale* could be applied.

6.68 The Trustees of the Ann Street Presbyterian Church Trust have informed the Commission that, in their view, section 1 along with sections 3–7 and 9 of the *Ann Street Presbyterian Church Act 1889* (Qld) are obsolete and can be repealed.

The Commission's view

6.69 Given that the vesting of the Creek Street lands occurred on 13 November 1889, section 1 of the *Ann Street Presbyterian Church Act 1889* (Qld) serves no further purpose and should be repealed.

6.70 Further, because the lands were resumed in 1925 and are no longer held on trust for Church purposes, sections 3–7 and 9 of the Act, which relate to the specific allotments, also serve no further purpose and should be repealed.

6.71 This would not affect anything suffered, done or begun, or any right, privilege or liability acquired, accrued or incurred, under those provisions.⁶¹

Whether the whole Act can be repealed

Section 8: Application of proceeds of sale, mortgage etc

6.72 Whether the remaining provisions of the Act could still be relevant depends on how the moneys paid by the Brisbane City Council were applied by the trustees.

6.73 As mentioned above, the Supreme Court order of 29 October 1925 provided that the trustees were to apply the capital of the trust for any, or all, of the purposes set forth in section 8 of the *Ann Street Presbyterian Church Act 1889* (Qld) as the Ann Street Presbyterian Church 'shall in its discretion think fit to direct'.

6.74 Section 8 of the *Ann Street Presbyterian Church Act 1889* (Qld) provides:

8 Application of proceeds of sale, mortgage etc.

- (1) All moneys to arise from any sale or mortgage made in pursuance of the powers aforesaid shall be expended in the following order so far as the same shall extend, that is to say in payment of—
 - (a) the reasonable expenses of and attending such sale or mortgage;
 - (b) the cost of applying for, obtaining, and passing this Act;
 - (c) the purchase of another site, or other sites, in a more convenient situation;

⁶¹

Acts Interpretation Act 1954 (Qld) s 20(2)(b)–(c).

- (d) the cost of the erection of a church on some part of the said land so purchased as aforesaid;
 - (e) the cost of all necessary fittings and furniture for the said church;
 - (f) the cost of the erection of a schoolhouse on the land so purchased;
 - (g) the cost of all necessary fittings and furniture for the said schoolhouse;
 - (h) the cost of the erection of a dwelling house for the minister duly appointed in accordance with the rules and practice of the Presbyterian Church of Queensland to officiate in the said church;
 - (i) the cost of all necessary fittings and furniture for the said dwelling house.
- (2) If there shall thereafter be any surplus the said trustees shall transfer the same to the said corporation [the Presbyterian Church of Queensland in General Assembly]⁶² and such surplus shall be applied by the said corporation to such uses and purposes and in such manner for promoting the spiritual and temporal welfare of the [Ann Street Presbyterian Church] as the said Church shall in its discretion think fit to direct in accordance with the rules and practice thereof. (note added)

6.75 Section 8(1) provides for the purposes for which, and the order in which, any moneys arising from the sale or mortgage of the Creek Street lands may be expended.

6.76 Section 8(2) further provides that any surplus is to be transferred to the Presbyterian Church of Queensland in General Assembly, which must apply the surplus 'to such uses and purposes and in such manner for promoting the spiritual and temporal welfare' of the Ann Street Presbyterian Church 'as the said Church shall in its discretion think fit to direct in accordance with the rules and practice thereof'.

6.77 The Trustees of the Ann Street Presbyterian Church Trust have informed the Commission that the moneys paid by the Brisbane City Council by way of compensation for the Creek Street lands have been completely expended.⁶³ Accordingly, in their view, the remaining provisions of the *Ann Street Presbyterian Church Act 1889* (Qld) can be repealed.

The Commission's view

6.78 In light of the submission of the Trustees of the Ann Street Presbyterian Church Trust, it appears that the moneys paid by the Brisbane City Council have been completely expended by their application in accordance with section 8(1). In

⁶² See *Ann Street Presbyterian Church Act 1889* (Qld) s 3.

⁶³ The Trustees of the Ann Street Presbyterian Church Trust have further informed the Commission that a formal notation to this effect is recorded in the minutes of the meeting of the Trustees of the Ann Street Presbyterian Church Trust held on 14 September 1999.

that event, there would appear to be no subsisting trust, so that section 8 and the remaining provisions of the *Ann Street Presbyterian Church Act 1889* (Qld) serve no further purpose and could be repealed.

6.79 However, because the extent to which these provisions are obsolete depends on factual matters, the Commission considers that it would be prudent for the *Ann Street Presbyterian Church Act 1889* (Qld) to be repealed, but declared to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. This would technically remove the Act from the statute book, but ensure that its effect does not end merely because of its repeal.

RECOMMENDATIONS

6.80 The Commission makes the following recommendations in relation to the Acts considered in this chapter:⁶⁴

Rec	Act	Provision	Recommendation
<i>Presbyterian Church of Australia Act 1900</i> (Qld)			
6-1	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Long Title*	Insert at the end— ' , and to make provision for union with other churches'.
6-2	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Preamble*	Omit and insert the following, which: <ul style="list-style-type: none"> • consolidates the current Preamble with those parts of the Preamble to the <i>Presbyterian Church of Australia Act 1971</i> (Qld) that continue to be relevant; • removes any duplication between the two Preambles; and • numbers the paragraphs of the Preamble—

⁶⁴ Recommendation 6-3 corrects a minor typographical error in line 11 of s 1 of the *Presbyterian Church of Australia Act 1900* (Qld). That part of the recommendation is self-explanatory and is not discussed elsewhere in this chapter.

* Those recommendations marked with an asterisk give effect, in whole or part, to Rec 6-23 for the consolidation of the relevant parts of the *Presbyterian Church of Australia Act 1971* (Qld) with the *Presbyterian Church of Australia Act 1900* (Qld).

Rec	Act	Provision	Recommendation
	<p>Preamble</p> <p>1 Whereas 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 Western Australia (now known as the Presbyterian Church in Western Australia) and the Presbyterian Church of Tasmania have resolved to unite and form one Presbyterian Church.</p> <p>2 And whereas it is expedient that the said union should be effected on the terms and conditions prescribed in the Basis of Union and Articles of Agreement set forth in schedule 1 and as amended from time to time (the scheme of union).</p> <p>3 And whereas on 24 July 1901 the said churches, holding the same doctrine, government, discipline and form of worship, agreed to unite on the basis of the said scheme of union, whereby there was constituted a body known as the Presbyterian Church of Australia, within which the said churches continued to exist as part of a federal ecclesiastical structure.</p> <p>4 And whereas property is held by or on behalf of or in connection with the Presbyterian Churches of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania respectively, and by congregations and bodies connected with the said churches respectively, and by persons for and on behalf of the said churches respectively, or congregations of the said churches respectively.</p> <p>5 And whereas it is expedient that all such property should after the said union be held subject to the terms and conditions of the said Basis of Union and Articles of Agreement as amended from time to time.</p> <p>6 And whereas pursuant to the <i>Presbyterian Church Property Act 1909</i> certain lands situated within the State coming within the definition of <i>church property</i> and formerly held by individuals as trustees have now become vested in the Presbyterian Church of Queensland, being the body corporate duly incorporated by that name on 13 June 1876 pursuant to the provisions of the <i>Religious Educational and Charitable Institutions Act 1861</i>.</p> <p>7 And whereas the affairs of the Presbyterian Church of Queensland are conducted in accordance with standing orders prepared by the general assembly of the Presbyterian Church of Australia and adopted by the Presbyterian Church of Queensland in conjunction with rules and forms of procedure adopted by the general assembly of the Presbyterian Church of Queensland.</p> <p>8 And whereas it is expedient that the general assembly of the said Presbyterian Church of Australia should have the power to enter into union with other churches subject to due and proper safeguards for minorities.</p> <p>9 And whereas the assent of the Parliaments of New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania is necessary to effect these objects.</p>		
6-3	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Section 1	<p>(1) Renumber as section 2.</p> <p>(2) Split existing section 1 into two subsections:</p> <ul style="list-style-type: none"> • Subsection (1) is to consist of the first clause of existing section 1, starting with the words 'From and

Rec	Act	Provision	Recommendation
			<p>after 7 November 1900’;</p> <ul style="list-style-type: none"> • Subsection (2) is to consist of the balance of existing section 1, starting with the words ‘Except as therein provided’. <p>(3) Omit— ‘in the schedule’.</p> <p>Insert— ‘in schedule 1, and as amended from time to time,’.</p> <p>(4) After the second occurrence of the words ‘Articles of Agreement’, insert— ‘, as amended from time to time,’.</p> <p>(5) Omit— ‘with the State’.</p> <p>Insert— ‘within the State’.</p>
6-4	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Section 2	Renumber as section 1.
6-5	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	New Part headings*	<p>(1) Before section 1 (renumbered as section 2) insert part heading— ‘Part 1 Adoption of Basis of Union and Articles of Agreement’.</p> <p>(2) After section 1 (renumbered as section 2) insert part heading— ‘Part 2 Implementation of schedule 2’.</p>
6-6	<i>Presbyterian Church of Australia Act 1900</i> (Qld)	Schedule*	<p>In the heading, omit— ‘The schedule’.</p> <p>Insert— ‘Schedule 1’.</p>

Rec	Act	Provision	Recommendation
Presbyterian Church of Australia Act 1971 (Qld)			
6-7	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Preamble	Omit (the relevant parts having been incorporated into the new Preamble to the <i>Presbyterian Church of Australia Act 1900 (Qld)</i> recommended at Rec 6-2).
6-8	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Sections 1–2	Omit.
6-9	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Schedule Pts I and II	Omit.
6-10	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1) opening words*	Omit— 'at any time prior to the adoption pursuant to section 2 of the whole basis of union set forth in the schedule'.
6-11	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1)(a)*	Omit— 'part III of the basis of union'. Insert— 'schedule 2'.
6-12	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1)(b)*	(1) Omit— 'part III of the basis of union'. Insert— 'the provisions of schedule 2'. (2) Omit— 'without the necessity of implementing the basis as a whole'.
6-13	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1)(c)*	Omit— 'part III of the basis of union'. Insert— 'the provisions of schedule 2'.
6-14	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(1) final paragraph*	(1) Omit— 'of any of the descriptions specified in section 2 subsisting immediately before the publication of the

Rec	Act	Provision	Recommendation
			<p>said notice shall (without prejudice to the subsequent exercise of the power contained in section 2)'. Insert (from omitted section 2(1))— 'held immediately before the publication of the said notice by or in trust for some or all the purposes of the Presbyterian Church of Queensland or the general assembly thereof, or any presbytery, session, committee of management, congregation, committee or council or board howsoever constituted or fund in connection with the said the Presbyterian Church of Queensland shall'. (2) Omit— 'part III of the basis of union'. Insert— 'schedule 2'. (3) Insert after section 3(1)— 'Editor's note— See Gazette, 11 December 1971, page 1713'.</p>
6-15	<i>Presbyterian Church of Australia Act 1971 (Qld)</i>	Section 3(2)(a)*	<p>Omit— 'under part III of the said basis of union set forth in the schedule'. Insert— 'under the provisions of schedule 2'.</p>

Rec	Act	Provision	Recommendation
6-16	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Section 3(2)(b) and (3)*	Omit— ‘the said part III’. Insert— ‘the provisions of schedule 2’.
6-17	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Section 3(2)(c) and (e)*	Omit— ‘the said part III’. Insert— ‘schedule 2’.
6-18	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Section 3(2)(d)*	(1) Omit— ‘under part III, section 18’. Insert— ‘under section 4 of schedule 2’. (2) Omit— ‘set forth in the schedule’. Insert— ‘set forth in schedule 1 and as amended from time to time’.
6-19	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Section 3(3)*	Omit— ‘defined in the said part’. Insert— ‘defined in the said schedule’.
6-20	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Section 4*	(1) Omit— ‘pursuant to either section 2 or 3’. Insert— ‘pursuant to section 3’. (2) Omit— ‘notice either section 2 or 3, as the case may be,’. Insert— ‘notice section 3’. (3) Omit— ‘property shall be redeemed’.

Rec	Act	Provision	Recommendation
			Insert— ‘property is to be taken’. (4) Omit— ‘to which section 2 or 3, as the case may be,’. Insert— ‘to which section 3’.
6-21	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Section 5*	Omit— ‘the basis of union set forth in the schedule’. Insert— ‘the provisions of schedule 2’.
6-22	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Schedule Pt III*	(1) Rename as ‘Schedule 2 Union with other churches’. (2) Renumber ss 15–18 as ss 1–4. (3) In s 18 (renumbered as s 4), omit— ‘pursuant to section 15’. Insert— ‘pursuant to section 1’.
6-23	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Sections 3–5 and Schedule Pt III*, as amended in accordance with Recs 6-10 to 6-22	Relocate the amended sections and Schedule to the <i>Presbyterian Church of Australia Act 1900</i> (Qld) by inserting after section 1 of that Act (renumbered as section 2) and the schedule to that Act, respectively.
6-24	<i>Presbyterian Church of Australia Act 1971</i> (Qld)	Whole Act	Repeal.
<i>Ann Street Presbyterian Church Act 1889 (Qld)</i>			
6-25	<i>Ann Street Presbyterian Church Act 1889</i> (Qld)	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954</i> (Qld) applies.

Chapter 7

Roman Catholic Church

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INTRODUCTION

7.1 The terms of reference require the Commission to review the following Acts relating to the Roman Catholic Church:

- *Roman Catholic Relief Act 1830 (Qld)*;
- *Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)*;
- *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945 (Qld)*;
- *Roman Catholic Church Lands Act 1985 (Qld)*; and

- *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld).

7.2 The Commission's recommendations about these Acts were developed following consultation with:

- the Catholic Archdiocese of Brisbane (on behalf of the Queensland Catholic Church, the Archdiocese of Brisbane, and the Dioceses of Toowoomba, Townsville, Rockhampton and Cairns);
- the Catholic Diocese of Cairns;
- the President of CRAqld;¹ and
- the Institute Leader of the Institute of Sisters of Mercy of Australia & Papua New Guinea.

ROMAN CATHOLIC RELIEF ACT 1830 (QLD)

Background

7.3 The English *Roman Catholic Relief Act 1829* was part of the process of Roman Catholic emancipation throughout the United Kingdom. Following the Restoration, Roman Catholics (and other non-Anglicans) were subject to various penalties, forfeitures and disabilities. Legislation such as the *Corporation Act 1661* and the *Test Acts* of 1672 and 1678 debarred Roman Catholics from holding public office by requiring them to take the oaths of allegiance and supremacy, and to take the sacrament according to the rites of the Church of England or to make a declaration against transubstantiation.²

7.4 The *Roman Catholic Relief Act 1829* relieved Roman Catholics from a number of penalties and civil disabilities to which they were then subject.³ It achieved this by:

- repealing any statutory provisions that required a person to take an oath or make a declaration against transubstantiation in order to qualify for the enjoyment of certain offices and rights;⁴ and
- providing that it was lawful for Roman Catholics to sit and vote in Parliament, vote at elections, hold, exercise and enjoy all civil and military

¹ CRAqld is the State Conference of CRA (Catholic Religious Australia). CRA is the public name of the Australian Conference of Leaders of Religious Institutes, which is the peak body for leaders of Religious Institutes and Societies of Apostolic Life resident in Australia: Catholic Religious Australia (11 October 2013) <<http://www.catholicreligiousaustralia.org/index.php/about-us/who-we-are>>.

² See generally Sir William Holdsworth, *A History of English Law* (Methuen and Sweet and Maxwell, first published 1924, 1966 ed) vol 6, 167–8, 199, citing *Corporation Act 1661*, 13 Car 2 St 2, c 1, s 9; *Test Act 1672*, 25 Car 2, c 2; and *Test Act 1678*, 30 Car 2 St 2, c 1.

³ Sir William Holdsworth, *A History of English Law* (Methuen and Sweet and Maxwell, first published 1924, 1966 ed) vol 8, 412.

⁴ *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, s 1 (Act as passed).

offices under the Crown (except as otherwise provided⁵), and be members of any lay body corporate, upon taking the oath prescribed in section 2 of the Act⁶ instead of the oaths of allegiance, supremacy and abjuration and certain other oaths (and declarations) that would otherwise have been required.⁷

7.5 The Act further provided that no oath or oaths could be tendered to, or required to be taken by, Roman Catholics in order for them to hold or enjoy property other than those that could by law be tendered to, and required to be taken by, other subjects.⁸

7.6 However, other provisions of the Act provided expressly for the 'gradual suppression and final prohibition' of 'Jesuits and members of other religious orders communities or societies of the Church of Rome bound by monastic or religious vows' who were resident within the United Kingdom.⁹ The Act also imposed a penalty on Roman Catholic ecclesiastics and members of certain other religious orders for exercising the rites or ceremonies of the Roman Catholic religion, or wearing the habits of their order, save within the usual places of worship of the Roman Catholic religion or in private houses.¹⁰

5 *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, s 12 provided that nothing in the Act was to be construed to enable Roman Catholics to hold certain offices, namely, the offices of Guardians and Justices of the United Kingdom or Regent of the United Kingdom; Lord High Chancellor, Lord Keeper or Lord Commissioner of the Great Seal of Great Britain or Ireland; Lord Lieutenant or Lord Deputy or other Chief Governor or Governors of Ireland; or His Majesty's High Commissioner to the General Assembly of the Church of Scotland. Nor was the Act to be construed to enable Roman Catholics to hold, enjoy or exercise any office in the United Church of England and Ireland or the Church of Scotland, the Ecclesiastical Courts of Judicature of England and Ireland, any university in the realm, the Colleges of Eton Westminster or Winchester or any college or school in the realm, or to repeal any local statute, ordinance or rule established by a competent university, college, hall or school that prevents Roman Catholics from being admitted thereto: s 16. The Act further provided that it was not lawful for a Roman Catholic to advise the Crown in the appointment to any office in the Established Church: s 18.

6 It has been suggested that the form of oath prescribed by s 2 of the *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, which contained words denying to the Pope any temporal or civil jurisdiction, power, superiority or pre-eminence, would still have been considered objectionable to Roman Catholics: Viscount Hailsham (ed), *Halsbury's Laws of England* (2nd ed, 1933) vol 11, [1710]. The requirement to take the oath set out in s 2 of the Act was changed by the *Promissory Oaths Act 1868*, 31 & 32 Vict, c 72, which required certain office-holders and other persons to take a shorter, more general oath of allegiance (ss 5–6) and relieved other persons of the requirement to take an oath at all (s 9). The oath in s 2 of the *Roman Catholic Relief Act 1829* was subsequently omitted by the *Promissory Oaths Act 1871*, 34 & 35 Vict, c 48, sch 1 pt 2.

7 *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, ss 2, 5, 10, 14 (Act as passed). In relation to voting at elections, the lawfulness of the exercise of that right was also conditional on taking 'such other oath or oaths as may now by law be lawfully tendered to any persons offering to vote at such elections': s 5. Similarly, in relation to appointment as a member of a lay body corporate, the lawfulness of that appointment was also conditional on taking 'such other oath or oaths as may now by law be required to be taken by any persons becoming members of such lay body corporate': s 14. See also s 22 in relation to oaths by military and naval officers.

8 *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, s 23 (Act as passed).

9 *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, ss 28–36 (Act as passed). These provisions did not apply to members of female religious orders: s 38.

10 *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, s 26 (Act as passed). This provision did not apply to members of female religious orders: s 38.

7.7 In *Re Smith*, which was decided in 1914, it was observed that the provisions relating to the suppression of Jesuits and other monastic or religious orders had never been enforced and that they were ‘a dead letter’.¹¹

7.8 As explained later, in the United Kingdom, the provisions of the Act relating to the suppression of Jesuits and other religious orders have since been repealed (as have many other provisions of the Act).¹²

Reception of the English *Roman Catholic Relief Act 1829* into the law of Queensland

7.9 In 1830, the colony of New South Wales adopted the English *Roman Catholic Relief Act 1829* by enacting the *Roman Catholic Relief Act 1830* (NSW), which provided that the English Act ‘extends to and is in force and the same is hereby declared to extend to and be in full force in the Colony in the same manner in all respects as if the said Act had contained a positive clause to such effect’.

7.10 As a law of the Colony of New South Wales, the *Roman Catholic Relief Act 1830* (NSW) became part of the law of Queensland when it separated from New South Wales in 1859,¹³ and remains in force today as a Queensland Act.

7.11 The Commission is not aware of any Queensland decisions that have considered the extent to which the provisions of the English *Roman Catholic Relief Act 1829* apply in Queensland. The issue has, however, been considered in two New South Wales cases.

7.12 In *Gleeson v Phelan*, Harvey J observed that the English Act included many references that were specific in their terms to the United Kingdom:¹⁴

A number of sections in the Imperial Act refer in terms to the United Kingdom as a whole, some of the sections relate to England, Scotland and Ireland, there are references to the English Church as established, and the Scotch Church as established, to the English Universities, colleges and schools, and so on; and the question is whether the adopted Act was intended to be read *mutatis mutandis*, substituting the colony of New South Wales where references to the United Kingdom appear, and leaving the Court before whom the question of construction arose to decide how far its provisions could be made applicable to a colony where there was no Established Church.

7.13 Although it was not ultimately necessary to decide that issue, Harvey J considered that, on its strictest construction, the Act was open to the interpretation that ‘the only portions of the Act which could be treated as applicable to this State are those in which there is no reference to the locality of the United Kingdom or to England, Scotland or Ireland’.¹⁵

¹¹ [1914] 1 Ch 937, 946 (Joyce J).

¹² See [7.20] below.

¹³ Queensland, *Queensland Government Gazette*, No 3, 24 December 1859, 9, Proclamation cl 20; *Australian Colonies Act 1861* (Imp) 24 & 25 Vict, c 44, s 3.

¹⁴ (1914) 15 SR (NSW) 30, 34.

¹⁵ *Ibid* 35.

7.14 On this view:¹⁶

the only section of the Act which would apply would be the first section, which repeals certain Imperial Acts relating to declarations against transubstantiation, and, possibly, the tenth section providing that Roman Catholics might hold civil and military offices under the Crown.

7.15 That view of the Act was adopted in *Perpetual Trustee Co (Ltd) v Wittscheibe*, where Williams J held that those provisions of the English Act that included a reference to the United Kingdom or a part of it (which is most of the Act) did not apply in New South Wales:¹⁷

The plain verbiage of the adopting Act does not appear to me to warrant the Court reading references in the English Act to the United Kingdom or some part thereof as applying *mutatis mutandis* to New South Wales. The policy of the English Act was on the one hand to relieve Roman Catholics of most of their disabilities, while on the other hand providing for the gradual suppression in the United Kingdom of the monastic Orders. It did not provide for the suppression of these Orders in any other part of the British Empire. The evidence shows no such Orders existed in New South Wales prior to 1833. In my opinion the adopting Act did not extend the provisions of ss 28 to 36 so as to provide for their suppression in New South Wales. If it did no end of difficulties would arise in deciding how these sections could be applied *mutatis mutandis* to this State. (emphasis added)

Reforms in other jurisdictions

Australia

7.16 The *Roman Catholic Relief Act 1830* (NSW) was repealed in New South Wales in 1976¹⁸ and in the ACT in 1999,¹⁹ and the equivalent Tasmanian legislation was repealed in 1934.²⁰

7.17 The Law Reform Commission of the Australian Capital Territory had earlier observed that the *Roman Catholic Relief Act* was, 'in its nature, quite inapplicable as part of the law of the ACT'.²¹

16 Ibid.

17 (1940) 40 SR (NSW) 501, 511.

18 *Statute Law Revision Act 1976* (NSW) s 2, sch 1. Its repeal was recommended in New South Wales Law Reform Commission, *First Report on Statute Law Revision*, Report No 10 (1971).

19 *Law Reform (Miscellaneous Provisions) Act 1999* (ACT) s 4, sch 1.

20 See *Constitution Act 1934* (Tas) s 2, sch 1. *Constitution Act 1934* (Tas) s 46 instead includes a guarantee of religious freedom. Relevantly, s 46(2) provides: 'No person shall be subject to any disability, or be required to take any oath on account of his religion or religious belief and no religious test shall be imposed in respect of the appointment to or holding of any public office'.

21 Law Reform Commission of the Australian Capital Territory, *Report on the Review of New South Wales Acts in Force in the Australian Capital Territory* (1974) 60. It recommended, pending further revision and modernisation, that only ss 10 (Roman Catholics may hold civil and military offices under His Majesty with certain exceptions), 11 (Not to exempt Roman Catholics from taking any other oaths required) and 15 (Roman Catholic members of lay corporations not to vote in ecclesiastical appointments) should be declared to be in force.

7.18 In its 1989 Report on the *Oaths Act*, this Commission recommended the repeal of the *Roman Catholic Relief Act 1830* in so far as it applies in Queensland.²² The Commission referred to the judgment of Harvey J in *Gleeson v Phelan*²³ and to his Honour's view that the Act is open to the construction that only sections 1 and 10 would apply in New South Wales.²⁴ It further observed that these provisions were no longer necessary as the oath prescribed under the *Roman Catholic Relief Act* 'has not been required to be taken since the enactment of the *Oaths Act 1857* (NSW)', and that '[a]ny statutes which impose disabilities upon Roman Catholics would have been repealed upon the enactment of the *Imperial Acts Application Act 1984*'.²⁵

7.19 To the extent that the provisions of the English *Roman Catholic Relief Act 1829* apply by virtue of the *Roman Catholic Relief Act 1830* (Qld), the oath prescribed by the *Roman Catholic Relief Act* has been substituted by the shorter oath of allegiance contained in section 1 of the *Oaths Act 1867* (Qld). Section 1 provides:

1 Oath substituted for the oaths and declaration now prescribed by law

In every case where but for the passing of this Act it would be necessary for any person to take the oaths commonly called the oaths of allegiance supremacy and abjuration or any of them or the oath prescribed by the Act of Parliament commonly called the *Roman Catholic Relief Act 1830* or to make the declaration prescribed by the Act of Parliament passed in the ninth year of the reign of King George IV chapter 17 and whensoever it shall be necessary for any person to take the oath of allegiance it shall be sufficient for such person to take in lieu of the said several oaths and declaration the following oath of allegiance—

'I A.B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, as lawful Sovereign of the United Kingdom, Australia, and her other Realms and Territories, and to Her Heirs and Successors, according to law.';

anything in the said Acts of Parliament or in any other statute Act or law notwithstanding. (emphasis added)

United Kingdom

7.20 Although the *Roman Catholic Relief Act 1829* is still in force in England, Scotland and Wales, the majority of its provisions have been repealed.²⁶

²² Queensland Law Reform Commission, *The Oaths Act*, Report No 38 (1989) 9, 116 (Draft Bill, cl 4(2)). The Commission's recommendation has not been implemented.

²³ (1914) 15 SR (NSW) 30, discussed at [7.12] ff above.

²⁴ Queensland Law Reform Commission, *The Oaths Act*, Report No 38 (1989) 8.

²⁵ Ibid 9.

²⁶ See, in particular, the *Promissory Oaths Act 1871*, 34 & 35 Vict, c 48, which repealed the *Roman Catholic Relief Act 1829*, 10 Geo 4, c 7, ss 1, 3–4, 6–7, 19–22, 25, 39–40; the *Roman Catholic Relief Act 1926*, 16 & 17 Geo 5, c 55, s 1, sch and the *Statute Law Revision Act 1953*, 2 Eliz 2, c 5, s 1, sch 1, which repealed ss 26, 28–37 of the Act; and the *Statute Law (Repeals) Act 1978* (UK), which repealed ss 2, 5, 11, 13, 23–24 of the Act.

7.21 The provisions that are still in force:

- enable Roman Catholics to elect and be elected as members to serve in Parliament for Scotland (section 8);
- enable Roman Catholics to hold civil and military offices, subject to stated exceptions (section 10);
- withhold certain offices from Roman Catholics (section 12);
- enable Roman Catholics to be members of lay corporations (section 14);
- provide that nothing in the Act is to be construed to enable Roman Catholics to hold certain offices²⁷ or to repeal any local statute, ordinance or rule established by competent authority within any university, college, hall or school that prevents Roman Catholics from being admitted thereto (section 16);
- provide that no Roman Catholic is to advise the Crown in the appointment of offices in the established church (section 18); and
- provide how any penalties imposed by the Act may be recovered (section 38).

Other relevant laws

7.22 In *Crittenden v Anderson*,²⁸ the High Court considered a challenge to the election of the respondent, Gordon Anderson, on the ground that, as a Roman Catholic, he owed allegiance to a foreign power and was, therefore, not capable of being chosen or of sitting as a member of the House of Representatives. Fullagar J observed that the petitioner was seeking to ‘revive a point of view which was abandoned in England in 1829’ when section 2 of the *Roman Catholic Relief Act 1829* was enacted.²⁹ His Honour held that the petition was untenable as effect ‘could not be given to the petitioner’s contention without the imposition of a “religious test”’, which was prohibited by section 116 of the Commonwealth Constitution.³⁰

7.23 The constraints in section 116 of the *Commonwealth Constitution* do not apply to the legislatures of the States.³¹ However, the Queensland Acts that

²⁷ See n 5 above.

²⁸ Unreported, High Court of Australia, Fullagar J, 23 August 1950, noted in (1977) 51 *Australian Law Journal* 171.

²⁹ Ibid.

³⁰ Ibid. *Commonwealth Constitution*, s 116 provides:

116 Commonwealth not to legislate in respect of religion

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth. (emphasis added)

³¹ *A-G (Vic); ex rel Black v Commonwealth* (1981) 146 CLR 559, 652 (Wilson J). See also at 577 (Barwick CJ).

provide for the qualifications to be elected as a member of the Legislative Assembly, to be eligible to vote, and to be appointed to certain offices do not impose any religious test or disqualification.³²

Whether the Act can be repealed

7.24 The Catholic Archdiocese of Brisbane, responding on behalf of the Queensland Catholic Church, submitted that the *Roman Catholic Relief Act 1830* (Qld) is obsolete and should be repealed. It commented that it was not aware of any legislative provision in Queensland that seeks to impose disabilities upon Roman Catholics and noted that, in any event, 'this would be contrary to the anti-discrimination laws and public policy'. It further noted that, to the extent that any oath of allegiance is required, this is provided for under the *Oaths Act 1867* (Qld).

The Commission's view

7.25 As explained earlier, the object of the English *Roman Catholic Relief Act 1829* was to relieve Roman Catholics from a number of penalties and civil disabilities to which they were then subject, which effectively debarred them from holding public office. This was primarily achieved by prescribing an acceptable form of oath.

7.26 To the extent that that Act applies by virtue of the *Roman Catholic Relief Act 1830* (Qld), the oath prescribed by it has been substituted by the oath under the *Oaths Act 1867* (Qld).³³

7.27 Further, there is no longer any legislative impediment to Roman Catholics holding public office. To the extent that the remainder of the Act may apply in Queensland,³⁴ the Commission is of the view that the Act, with its various provisions for the suppression of Jesuits and other religious orders, reflects values that are repugnant to modern society.

7.28 The Commission is therefore of the view that the *Roman Catholic Relief Act 1830* (Qld) is obsolete and should be repealed. This view is consistent with the earlier recommendation of this Commission in its 1989 Report on the *Oaths Act*.

7.29 Section 1 of the *Oaths Act 1867* (Qld) should also be consequentially amended to omit the reference to the *Roman Catholic Relief Act 1830* (Qld).

³² See, in particular, *Constitution of Queensland 2001* (Qld) s 21; *Parliament of Queensland Act 2001* (Qld) s 64; and *Electoral Act 1992* (Qld) ss 64, 106. See generally *Anti-Discrimination Act 1991* (Qld) s 7(i), ch 2 pt 4 div 2, which prohibits discrimination on the basis of religious belief or activity in a number of areas of activity including, relevantly, work and work-related areas.

³³ See [7.19] above.

³⁴ See [7.11] ff above.

ROMAN CATHOLIC CHURCH (NORTHERN LANDS) VESTING ACT 1941 (QLD)

Background

7.30 The *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) was enacted to vest certain property in the Roman Catholic Trust Corporation for the Diocese of Cairns and in the Vicar Provincial of the Order of the Hermits of Saint Augustine in Queensland,³⁵ each of which is a body corporate constituted by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld).

7.31 When the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) was introduced, the Vicariate Apostolic of Cooktown had recently been elevated to become the Diocese of Cairns. The provisions of the Act anticipated the cancellation of the letters patent constituting the Vicar Apostolic of the Vicariate Apostolic of Cooktown as a body corporate under the *Religious Educational and Charitable Institutions Act 1861* (Qld) and the issuing of letters patent under that Act constituting a new body corporate by the name of the Roman Catholic Trust Corporation for the Diocese of Cairns.³⁶

Whether sections 3, 3A and 4 and Schedules 1–4 are obsolete

7.32 Section 3 of the Act provides that, on the issuing of the letters patent constituting the Roman Catholic Trust Corporation for the Diocese of Cairns, the lands and leases described in Schedules 1 and 2 and certain personal property are, without any conveyance, assignment or transfer, to vest in that corporation, freed and discharged from the trusts (if any) under which the said lands and leases were held.

7.33 Section 4 further provides that the lands described in Schedule 3 and certain personal property are, without any conveyance, assignment or transfer, to vest in the Vicar Provincial of the Order of the Hermits of Saint Augustine in Queensland, freed and discharged from the trusts (if any) under which the said lands were held.

7.34 Section 13 further provides that, on the cancellation of the letters patent constituting the Vicar Apostolic of the Vicariate Apostolic of Cooktown, unless the order in council cancelling the letters patent provides otherwise, all property of the dissolved corporation is to vest in the Roman Catholic Trust Corporation for the Diocese of Cairns, without any conveyance, assignment or transfer.

7.35 The Act was amended in 1981 to insert section 3A, which provides for the additional lands described in Schedule 4 to be vested in the Roman Catholic Trust

³⁵ Queensland, *Parliamentary Debates*, Legislative Assembly, 4 December 1941, 1769 (J O'Keefe, Attorney-General).

³⁶ *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) Preamble paras 1–5.

Corporation for the Diocese of Cairns, freed and discharged from the trusts (if any) under which they were then held.³⁷

7.36 The Catholic Diocese of Cairns has informed the Commission that, in its view, there is no need to retain sections 3, 3A, 4 and 13 or Schedules 1–4, all of which relate to various parcels of land that vested under the operation of the Act.

The Commission's view

7.37 In the Commission's view, sections 3, 3A, 4 and 13 have served their purpose in vesting the land described in Schedules 1–4 of the Act. Consequently, those sections, as well as the four schedules, should be repealed. While that will necessitate some slight redrafting of the remaining provisions of the Act that refer to the land described in those Schedules, it will not affect the vesting of the land or the leases that has already occurred under the Act.³⁸

Section 14: Duty of registrar of titles

7.38 Section 14(1) of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) imposes a duty on the Registrar of Titles, on application made by the Roman Catholic Trust Corporation for the Diocese of Cairns, to register the corporation as the registered proprietor in respect of the lands vested in the corporation and described in Schedules 1 and 4.³⁹

7.39 Section 14(2) imposes a similar duty to register the Vicar Provincial of the Order of the Hermits of Saint Augustine in Queensland as the registered proprietor of the lands described in Schedule 3.

7.40 Although the lands described in Schedules 1, 3 and 4 have vested in the respective corporations, the Catholic Diocese of Cairns has advised the Commission that it is not in a position to say categorically that all of the lands have been registered in the names of those corporations.

Provisions in relation to leases

7.41 As mentioned above, section 3 of the Act provided for the vesting in the Roman Catholic Trust Corporation for the Diocese of Cairns of the leases described in Schedule 2 of the Act. Schedule 2 lists four leases:

- 1 Mineral homestead lease no 238, volume 33, folio 51, under the *Mineral Homestead Leases Act 1891*, Mining District of Walsh and Tinaroo, County of Cardwell, Parish of Mullaburra, allotment 14 of section 13, Town of Mount Garnet, containing 1 rd 10 p in the name of Thomas William O'Brien.

³⁷ *Roman Catholic Church (Northern Lands) Vesting Act Amendment Act 1981* (Qld) ss 2–3.

³⁸ *Acts Interpretation Act 1954* (Qld) s 20(2)(b)–(c).

³⁹ See *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) s 3A(2), which provides that the provisions of the Act apply to the lands set out in sch 4 of the Act as if sch 4 were part of sch 1.

- 2 Miner's homestead lease no 319, volume 108, folio 66, under the *Mining Act 1898*, Proclaimed Field of Walsh and Tinaroo, County of Cardwell, Parish of Mullaburra, Town of Coolgarra, containing 2 rd in the name of Thomas William O'Brien.
- 3 Lease no N76897, under the *Sugar Works Act 1911*, County of Nares, Parish of Bellenden Ker, Town of Babinda, allotment 13 of section 2 of portion 129, described in deed of grant no N9151, volume 178, folio 5, containing 1 rd in the name of John Heavey.
- 4 Lease no N81300, under the *Sugar Works Act 1911*, County of Nares, Parish of Bellenden Ker, Town of Babinda, allotment 14 of section 2 of portion 129, described in deed of grant no N9151, volume 178, folio 5, containing 1 rd in the name of John Heavey.

Mining leases

7.42 The first two leases mentioned in Schedule 2 are mining leases under, respectively, the *Mineral Homestead Leases Act 1891* (Qld) and the *Mining Act 1898* (Qld). Both of those Acts have been repealed.⁴⁰

7.43 The Catholic Diocese of Cairns has informed the Commission that the Roman Catholic Trust Corporation for the Diocese of Cairns no longer holds any interest in the lands that were the subject of either of the two mining leases.⁴¹

7.44 Mineral Homestead Lease No 238 now forms part of lot 132 on Crown Plan M4921 (Title Reference 49005566). It is a State School Reserve, the trustee being the State of Queensland (represented by the Department of Education, Training and Employment).⁴²

7.45 Miner's Homestead Lease No 319 is now described as lot 319 on Crown Plan MPH 24625 (Title Reference 47003054). It is a parcel of unallocated State land administered by the Department of Natural Resources and Mines.⁴³

Leases under the *Sugar Works Act 1911* (Qld)

7.46 The last two leases mentioned in Schedule 2 are leases under the *Sugar Works Act 1911* (Qld).

7.47 The *Sugar Works Act 1911* (Qld) provided a mechanism for the establishment of central, cooperative sugar mills in Queensland, financed by the Queensland Government. The Act provided for the Governor in Council to declare an area, on application, to be a sugar works area on which a sugar works would be constructed by the Corporation of the Treasurer of Queensland with moneys

⁴⁰ The *Mineral Homestead Leases Act 1891* (Qld) was repealed by the *Mining Act 1898* (Qld) s 4, which was repealed by the *Mining Act 1968* (Qld) s 4, sch, which was then repealed by the *Mineral Resources Act 1989* (Qld) s 1.5, sch 1.

⁴¹ Information provided by the Catholic Diocese of Cairns, 29 November 2013.

⁴² Information provided by the Department of Natural Resources and Mines, 9 December 2013. The area was reserved by Order in Council on 10 April 1947: see Queensland, *Queensland Government Gazette*, No 84, 12 April 1947, 1079–80.

⁴³ Information provided by the Department of Natural Resources and Mines, 9 December 2013.

appropriated by Parliament for that purpose.⁴⁴ The Governor in Council was also to reserve and set apart a suitable area of land within the sugar works area for the purposes of a township.⁴⁵

7.48 The area of land set apart within the sugar works area for the purposes of a township was, after setting apart certain portions, to be divided into allotments and open to perpetual lease in accordance with the regulations made under the Act.⁴⁶ The *Sugar Works Townships Regulations 1914* (Qld) empowered the Corporation of the Treasurer of Queensland to grant a perpetual lease of a township allotment to any qualified person.⁴⁷

7.49 It was a condition of every lease that the tenant shall not sublet, unless approval was given by the Corporation of the Treasurer of Queensland and the sublease was made to a qualified person and in writing with a copy deposited with the agent appointed by the Corporation.⁴⁸

7.50 The *Sugar Works Act 1911* (Qld) was repealed by the *Acts Repeal Act 1968* (Qld) as 'no longer' having 'any legislative operation'.⁴⁹

7.51 Title searches obtained by the Commission reveal that the land that was the subject of these two leases was ultimately granted in fee simple to the Roman Catholic Trust Corporation for the Diocese of Cairns, and is still held by the Corporation as part of a larger, amalgamated lot:

- on 12 August 1931, the two leases, which were originally granted in perpetuity, were deemed, pursuant to the provisions of the *Babinda Township Act 1930* (Qld), to be leases of the land for a term of 20 years from 1 January 1931;⁵⁰
- on 20 April 1942, the two leases were registered in the name of the Roman Catholic Trust Corporation for the Diocese of Cairns pursuant to the provisions of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld);⁵¹

44 *Sugar Works Act 1911* (Qld) ss 3–4, 6–7, 9(1)–(2).

45 *Sugar Works Act 1911* (Qld) s 11(1).

46 *Sugar Works Act 1911* (Qld) s 11(2).

47 *Sugar Works Townships Regulations 1914* (Qld) s 5. See also s 14(2).

48 *Sugar Works Townships Regulations 1914* (Qld) s 19.

49 Queensland, *Parliamentary Debates*, Legislative Assembly, 9 April 1968, 2935 (JCA Pizzey, Premier). See *Acts Repeal Act 1968* (Qld) s 2, sch.

50 Department of Natural Resources and Mines (Qld), Certificate of Title vol 233 folio 175 (Title Reference 20233175); Department of Natural Resources and Mines (Qld), Certificate of Title vol 233 folio 176 (Title Reference 20233176). *Babinda Township Act 1930* (Qld) s 3(1)(a) provided for a lessee of a business lease or residence lease to apply to the Minister to have his or her lease deemed to be a lease for a term of 20 years, including a covenant entitling the lessee to a deed of grant or certificate of title in fee simple. Entitlement to a deed of grant or certificate of title of the land in fee simple was conditional on payment of an amount equal to 20 times the annual rent of the land under the business lease or residence lease: s 3(1)(b).

51 Department of Natural Resources and Mines (Qld), Certificate of Title vol 233 folio 175 (Title Reference 20233175); Department of Natural Resources and Mines (Qld), Certificate of Title vol 233 folio 176 (Title Reference 20233176).

- on 15 November 1955, the fee simple in the land that had been the subject of the two leases was granted to the Roman Catholic Trust Corporation for the Diocese of Cairns pursuant to the provisions of the *Babinda Township Act 1930* (Qld);⁵²
- on 10 April 1981, the land that had been the subject of Lease No N81300 became registered in the name of the Corporation of the Sisters of Mercy of the Diocese of Cairns, but was transferred back to the Roman Catholic Trust Corporation for the Diocese of Cairns on 20 September 2005;⁵³ and
- on 29 September 2010, both parcels of land were amalgamated with other land owned by the Roman Catholic Trust Corporation for the Diocese of Cairns to form lot 213 on Survey Plan 236929, which is still held by the Roman Catholic Trust Corporation for the Diocese of Cairns.⁵⁴

7.52 The Catholic Diocese of Cairns has informed the Commission that lot 213 on Survey Plan 236929 is the site of the Catholic Church, presbytery and school in Babinda.⁵⁵

Section 8: Power to sublease

7.53 Section 8 of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) provides that it is lawful for the Roman Catholic Trust Corporation for the Diocese of Cairns to sublease the mining leases and the leases under the *Sugar Works Act 1911* (Qld) that are referred to in Schedule 2.

Section 15: Duty of secretary for mines and other registration officers

7.54 Section 15 of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) requires the secretary for mines and the proper officer in respect of the *Sugar Works Act 1911* (Qld), on application made by the Roman Catholic Trust Corporation for the Diocese of Cairns, to register the corporation as lessee of the leases described in Schedule 2 of the Act and to issue any documents necessary for that purpose and make such endorsements and any entry as may be necessary.

52 Department of Natural Resources and Mines (Qld), Deed of Grant of Land vol 504 folio 153 (Title Reference 20504153); Department of Natural Resources and Mines (Qld), Deed of Grant of Land vol 504 folio 154 (Title Reference 20504154).

53 Department of Natural Resources and Mines (Qld), Deed of Grant of Land vol 504 folio 154 (Title Reference 20504154); Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 20504154).

54 Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 20504153); Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 20504154); Department of Natural Resources and Mines (Qld), Current Title Search (Title Reference 50824948).

55 Information provided by the Catholic Diocese of Cairns, 29 October 2013.

The Commission's view

7.55 Given that the Roman Catholic Trust Corporation for the Diocese of Cairns is no longer the lessee of any of the leases described in Schedule 2, that schedule should be repealed, together with sections 8 and 15 of the Act, which are now obsolete.

7.56 The Act should also be amended:

- to omit paragraphs 7 and 8 of the Preamble, which refer to the Schedule 2 leases; and
- to omit the reference in section 5(1) to the Schedule 2 leases.

Relocation of remaining provisions

7.57 Once sections 3–4, 8, 13 and 15 and Schedules 1–4 of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) have been repealed, the remaining Act will be quite short.

7.58 The Catholic Diocese of Cairns has informed the Commission that it would have no objection to the remaining provisions of the Act being relocated to the *Roman Catholic Church Lands Act 1985* (Qld).

The Commission's view

7.59 In the interests of consolidating the legislation relating to land ownership by the Catholic Church, the remaining provisions of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) should be relocated to form a discrete part within the *Roman Catholic Church Lands Act 1985* (Qld). The *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld) should then be repealed.

ROMAN CATHOLIC CHURCH (CORPORATION OF THE SISTERS OF MERCY OF THE DIOCESE OF CAIRNS) LANDS VESTING ACT 1945 (QLD)

7.60 The *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld) was enacted to vest certain property in the Corporation of the Sisters of Mercy of the Diocese of Cairns, a body corporate constituted on 3 June 1943 by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld).

7.61 The Institute of Sisters of Mercy of Australia & Papua New Guinea (the 'ISMAPNG') has informed the Commission that it is the canonical and civil successor to the Corporation of the Sisters of Mercy of the Diocese of Cairns.⁵⁶

⁵⁶

Information provided by the Institute of Sisters of Mercy of Australia & Papua New Guinea, 2 October 2013.

Section 2 and Schedules 1 and 2: Vesting of freehold land and lease

7.62 On the commencement of the *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld), section 2 divested the 33 parcels of freehold land described in Schedule 1 and the lease described in Schedule 2 from the persons who were, at the passing of the Act, the registered proprietors and lessee, and vested that land and lease in the Corporation of the Sisters of Mercy of the Diocese of Cairns (the 'Corporation').

7.63 The vesting of the land and lease that occurred when the Act commenced would not be affected by the omission of section 2 or Schedules 1 and 2.⁵⁷

7.64 The ISMAPNG has informed the Commission that, in its view, there is no need to retain section 2 or Schedules 1 and 2 of the Act.

Section 11: Duty of registrar of titles

7.65 Section 11 of the Act imposes a duty on the Registrar of Titles, on application made by the Corporation, to register the Corporation as the registered proprietor in respect of the lands vested in the Corporation and described in Schedule 1.

7.66 Section 11 would serve a further purpose only if any of the land described in Schedule 1 had not yet been registered in the name of the Corporation.

7.67 The ISMAPNG has informed the Commission that all of the land described in Schedule 1 was registered in the name of the Corporation.

Provisions that refer to the *Sugar Works Act 1911* (Qld)

7.68 The Act has several provisions that refer to the *Sugar Works Act 1911* (Qld):

- section 3 provides that the Corporation, as registered lessee of the lease referred to in Schedule 2, may exercise the powers, rights and remedies that are permitted by the *Sugar Works Act 1911* (Qld);
- section 6 provides that, in respect of the lease referred to in Schedule 2, it is lawful for the Corporation to sublease all or any part of the lease, thereby overcoming the restrictions imposed by the *Sugar Works Act 1911* (Qld) on subleasing;⁵⁸ and
- section 12 requires the proper officer in respect of the *Sugar Works Act 1911* (Qld), on application made by the Corporation, to register the Corporation as lessee of the lease described in Schedule 2, and to issue any documents necessary for that purpose and make such endorsements and any entry as may be necessary.

⁵⁷ *Acts Interpretation Act 1954* (Qld) s 20(2)(b)–(c).

⁵⁸ See [7.49] above.

7.69 However, as mentioned earlier in this chapter, the *Sugar Works Act 1911* (Qld) was repealed over 40 years ago.⁵⁹

7.70 Further, title searches obtained by the Commission reveal that the land that was the subject of the lease referred to in Schedule 2, Lease No N81302, is no longer held by the Corporation:

- on 12 August 1931, the lease, which was originally granted in perpetuity, was deemed, pursuant to the provisions of the *Babinda Township Act 1930* (Qld), to be a lease of the land for a term of 20 years from 1 January 1931;⁶⁰
- on 16 January 1947, the lease was vested in the Corporation pursuant to the provisions of the *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld);⁶¹
- pursuant to section 3 of the *Babinda Township Act 1930* (Qld), the Corporation became entitled to a Deed of Grant in fee simple of the land, which was registered on 25 June 1952;⁶²
- on 25 June 1980, the land was registered in the name of the Roman Catholic Trust Corporation for the Diocese of Cairns,⁶³ thereby divesting the land from the Corporation of the Sisters of Mercy of the Diocese of Cairns; and
- in 2003, the land was amalgamated with other land owned by the Roman Catholic Trust Corporation for the Diocese of Cairns to form lot 900 on Survey Plan 158830⁶⁴ and, in 2010, was further amalgamated with other land to form lot 213 on Survey Plan 236929, which is still held by the Roman Catholic Trust Corporation for the Diocese of Cairns.⁶⁵

7.71 The ISMAPNG has confirmed that the Corporation of the Sisters of Mercy of the Diocese of Cairns no longer holds any interest in the land that was the subject of Lease No N81302. It has also informed the Commission that, in its view, sections 6 and 12 of the *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld) can be repealed, together with the reference in section 3 of the Act to the *Sugar Works Act 1911* (Qld).

⁵⁹ See [7.50] above.

⁶⁰ Department of Natural Resources and Mines (Qld), Certificate of Title vol 233 folio 177 (Title Reference 20233177). See n 50 above as to the *Babinda Township Act 1930* (Qld).

⁶¹ Department of Natural Resources and Mines (Qld), Certificate of Title vol 233 folio 177 (Title Reference 20233177).

⁶² Department of Natural Resources and Mines (Qld), Deed of Grant of Land vol 464 folio 65 (Title Reference 20464065).

⁶³ *Ibid.*

⁶⁴ Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 20464065); Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 20616172); Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 20504156).

⁶⁵ Department of Natural Resources and Mines (Qld), Current Title Search (Title Reference 50824948). See [7.51]–[7.52] above.

Other provisions of the Act

7.72 Other provisions of the *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld):

- confirm that the Corporation has, in relation to the land referred to in Schedule 1 and the lease referred to in Schedule 2, the powers, rights and remedies conferred by the *Religious Educational and Charitable Institutions Act 1861* (Qld), the *Religious, Educational, and Charitable Institutions Act 1861 Amendment Act 1895* (Qld) and the *Land Title Act 1994* (Qld) (section 3);
- confer the powers to mortgage, lease and sell the land vested in the Corporation under the Act (sections 4–5 and 7); and
- provide for the effect of receipts given by the Corporation, the application of income and profits from the land, and the enforcement of actions in respect of the land (sections 8–10).

Whether the Act or particular provisions can be repealed

7.73 The Commission sought the views of the ISMAPNG on whether the following provisions and parts of the Act could be repealed:

- sections 2, 6, 11 and 12;
- Schedules 1 and 2; and
- the reference in section 3 to the *Sugar Works Act 1911* (Qld).

7.74 As mentioned above, the ISMAPNG responded that there is no need to retain section 2 or Schedules 1 and 2, and that sections 6 and 12 could be repealed, together with the reference in section 3 to the *Sugar Works Act 1911* (Qld).

7.75 In addition, the ISMAPNG informed the Commission that none of the land to which the Act applies is still registered in the name of Corporation. In that regard, it advised that:

- the ISMAPNG was established on 12 December 2011; and
- all property that, prior to that date, was still registered in the name of the Corporation has been transferred to, and registered in the name of, either of two ISMAPNG property corporations.

7.76 The ISMAPNG stated that, because none of the land is registered in the name of the Corporation, it would have no objection to the repeal of the Act in its entirety.

The Commission's view

7.77 As explained earlier, the land described in Schedule 1 of the Act and the lease described in Schedule 2 were automatically vested in the Corporation on the commencement of the Act. Section 2 therefore has no further purpose and can be repealed, together with Schedules 1 and 2 of the Act.

7.78 In addition, because all of the land described in Schedule 1 was subsequently registered in the name of the Corporation, section 11 has no further purpose and can be repealed.

7.79 Sections 6 and 12, together with the reference in section 3 to the *Sugar Works Act 1911* (Qld), can also be repealed as having no further purpose. The ISMAPNG has confirmed that the Corporation no longer holds any interest in the land that was formerly the subject of the lease under the *Sugar Works Act 1911* (Qld), and the *Sugar Works Act 1911* (Qld) has, in any event, been repealed.

7.80 The other provisions of the *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld) would serve a purpose if the Corporation still held any of the parcels of land described in Schedule 1. However, as all of that land has now been transferred to other corporations,⁶⁶ the remaining provisions of the Act (and, in particular, the provisions conferring various powers in relation to the land that vested under the Act) have no further operation.

7.81 The Commission is therefore of the view that the whole of the *Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945* (Qld) is obsolete and should be repealed.

ROMAN CATHOLIC CHURCH LANDS ACT 1985 (QLD)

7.82 The *Roman Catholic Church Lands Act 1985* (Qld) is a short Act consisting of five substantive sections and four schedules that contain numerous real property descriptions. It was enacted at the request of the then Archbishop of Brisbane to enable certain church lands in the Archdiocese of Brisbane and the Dioceses of Townsville and Toowoomba that were, at the time, vested in the names of deceased Church officials to be divested from those persons and vested in the relevant Church corporations constituted under the *Religious Educational and Charitable Institutions Act 1861* (Qld), completely freed and discharged from any trusts under which they were held.⁶⁷ The Act was amended in 1986 to make similar provision for the vesting of certain church lands in the Diocese of Rockhampton.⁶⁸

7.83 Section 2 of the Act vests in the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane the land described in Schedule 1 of the Act;

⁶⁶ See [7.75] above.

⁶⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 26 February 1985, 3388–9 (NJ Harper, Minister for Justice and Attorney-General).

⁶⁸ *Roman Catholic Church Lands Act Amendment Act 1986* (Qld).

section 3 vests in the Roman Catholic Trust Corporation for the Diocese of Townsville the land described in Schedule 2; section 4 vests in the Corporation of the Roman Catholic Diocese of Toowoomba the land described in Schedule 3; and section 4A vests in the Roman Catholic Trust Corporation for the Diocese of Rockhampton the land described in Schedule 4.

7.84 Section 5 imposes a duty on the Registrar of Titles, a mining warden or other person who is required by an Act or law to record particulars in a register of title to land, upon receipt of a duly completed request by the relevant Corporation, to give effect to the provisions of the Act providing for the divesting and vesting of particular land by making an entry in any register under his or her control.

7.85 As originally passed, section 6 of the *Roman Catholic Church Lands Act 1985* (Qld) enabled the Governor in Council, from time to time, by Order in Council to amend the schedules to the Act by adding further descriptions of land located within the Archdiocese of Brisbane and within the Dioceses of Townsville and Toowoomba. The purpose of that provision was to provide for the possibility that, in the future, 'it [should] be discovered ... by the church authorities that other church lands are not vested in the appropriate church corporations'.⁶⁹ In 1994, section 6 was omitted,⁷⁰ with the result that, since that time, the schedules to the Act may be amended only by another Act and cannot be amended by Order in Council.

7.86 Until recently, the Act had been amended on only three occasions to provide for the vesting of additional lands:

- as mentioned above, the Act was amended in 1986 to make provision for the vesting of certain lands within the Diocese of Rockhampton;⁷¹
- in 1994, Schedule 1 was amended to make provision for the vesting of certain additional lands within the Archdiocese of Brisbane;⁷² and
- in 1996, Schedule 1 was again amended to make provision for the vesting of certain additional lands within the Archdiocese of Brisbane.⁷³

7.87 However, Schedule 1 of the Act was amended in 2013 to provide for the vesting in the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane of the land on which St Michael's Church at Pine Ridge is located.⁷⁴ This amendment was requested by legal representatives of the Church to correct the omission of that land from Schedule 1 of the Act.⁷⁵

69 Queensland, *Parliamentary Debates*, Legislative Assembly, 26 February 1985, 3389 (NJ Harper, Minister for Justice and Attorney-General).

70 *Statute Law (Miscellaneous Provisions) Act 1994* (Qld) s 3, sch 1.

71 *Roman Catholic Church Lands Act Amendment Act 1986* (Qld).

72 *Statute Law (Miscellaneous Provisions) Act 1994* (Qld) s 3, sch 1.

73 *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996* (Qld) pt 20.

74 *Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013* (Qld) s 56. This provision commenced on 27 November 2013: *Acts Interpretation Act 1954* (Qld) s 15A. Explanatory Notes, *Liquor (Red Tape Reduction) and Other Legislation Amendment Bill 2013* (Qld) 2.

75 Explanatory Notes, *Liquor (Red Tape Reduction) and Other Legislation Amendment Bill 2013* (Qld) 2, 12.

Whether the Act or any part of it is obsolete

7.88 The Catholic Archdiocese of Brisbane has informed the Commission that:

- all the real property descriptions in Schedule 1 could be deleted as all of those parcels of land were transferred into the name of the Corporation of the Trustees of the Roman Catholic Archdiocese of Brisbane after the Act was introduced;
- the one property listed in Schedule 2 has been transferred to the Roman Catholic Trust Corporation for the Diocese of Townsville;
- the one property listed in Schedule 3 was transferred to the Corporation of the Roman Catholic Diocese of Toowoomba and was subsequently sold; and
- the four properties listed in Schedule 4 were transferred to the Roman Catholic Trust Corporation for the Diocese of Rockhampton, and three of those properties were subsequently sold.

7.89 The Catholic Archdiocese of Brisbane also noted that, because of the *Acts Interpretation Act 1954* (Qld), the repeal of the real property descriptions in Schedules 1 to 4 would not affect the lands that had been vested.

7.90 However, it expressed the view, on behalf of the Queensland Catholic Dioceses, that the Act is still needed and should be retained. It noted that it is 'impossible to predict with accuracy the extent to which the [Act] will be required in the future', and explained that:

The whole purpose of the Act arose because collectively, over a long period of years, the Church periodically identified parcels of land which were intended to be transferred to the Church, or held in trust for the Church, but title was never perfected. Achieving a transfer became problematic because land was registered in the name of trustee(s) who [had] since passed away, and there was no current identifiable executor who could regularize the position. The lands stood 'in limbo', and nothing could be done with them until the Act was introduced.

7.91 The Catholic Archdiocese of Brisbane further noted that the legislation not only deals with errors of the past, as evidenced by its most recent amendment, but is also 'an avenue to rectify title deed anomalies that may also happen in the future'. It explained that this 'usually arises when a person leaves land in their wills or set up trusts in relation to land, to benefit the Catholic Church or a Catholic entity'.

The Commission's view

7.92 To the extent that Schedules 1–4 of the Act list the real property descriptions of various parcels of land that have already vested in accordance with the provisions of sections 2–4A of the Act, the inclusion of those real property descriptions does not serve any further purpose. Accordingly, the content of the four Schedules should be omitted.

7.93 However, the Act and the Schedules (without their current content) should be retained. The recent amendment to the Act demonstrates its utility as a vehicle for vesting property in the names of the various corporations to which it applies.⁷⁶

ROMAN CATHOLIC CHURCH (INCORPORATION OF CHURCH ENTITIES) ACT 1994 (QLD)

7.94 As explained in Chapter 2, in 1982, the *Religious Educational and Charitable Institutions Act 1861* (Qld) was repealed and replaced by the *Associations Incorporation Act 1981* (Qld).⁷⁷ Although the latter Act provides that letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld) continue to be of full force and effect and to be subject to that Act as if the *Associations Incorporation Act 1981* (Qld) had not been passed,⁷⁸ it is no longer possible for new bodies corporate to be constituted under the repealed Act.

7.95 The *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) was enacted at the request of the Roman Catholic Church to address various difficulties that the Church had experienced since the repeal of the *Religious Educational and Charitable Institutions Act 1861* (Qld):⁷⁹

Since the repeal of the RECI Act by the AI Act, the Roman Catholic Church has experienced significant problems in having particular religious bodies incorporated. Incorporation is necessary to endow such bodies with the powers and abilities necessary to function effectively in the contemporary world, for example, the ability to hold real property in an efficient manner without having to rely on unwieldy structures utilising trustees. In the Church's view, because of its special needs, the AI Act is not the most practical of vehicles to achieve the incorporation of church bodies and consequently the Church has sought the enactment of its own legislation, as other mainstream Churches already have, for example, the *Church of England Act 1895* and the *Uniting Church in Australia Act 1977*.

Incorporation of church entities

7.96 The *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) is the most recently enacted of the five Acts considered in this chapter. Unlike most of those other Acts, its provisions are not concerned with particular Church property, but are of more general application.

7.97 The Act establishes a corporation called the Corporation of the Roman Catholic Bishops of Queensland (the 'Corporation of Bishops'), which consists of the persons for the time being holding appointment as bishop.⁸⁰

7.98 It also makes provision for:

⁷⁶ See [7.87] above.

⁷⁷ *Associations Incorporation Act 1981* (Qld) s 4(1), sch 1 (Act as passed).

⁷⁸ *Associations Incorporation Act 1981* (Qld) s 144.

⁷⁹ Explanatory Notes, Roman Catholic Church (Incorporation of Church Entities) Bill 1994 (Qld) 2.

⁸⁰ *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) ss 5–6.

- the incorporation of church entities (including associated entities) and for the vesting of property upon the incorporation of those entities;⁸¹ and
- the ‘establishment’ under the Act of ‘existing church corporations’, being either incorporated associations under the *Associations Incorporation Act 1981* (Qld) or corporations established by letters patent under the *Religious Educational and Charitable Institutions Act 1861* (Qld).⁸²

7.99 A request for the incorporation of a church entity or for the establishment of an existing church corporation may be made by the bishop of the diocese or archdiocese in which the church entity or corporation is functioning or by the Corporation of Bishops.⁸³

7.100 The establishment of an existing church corporation does not affect the corporation’s legal personality or identity or affect a right, entitlement or liability of the corporation or anyone else.⁸⁴

7.101 On the issue of a certificate of incorporation under the Act for an incorporated association under the *Associations Incorporation Act 1981* (Qld), the corporation ceases to be an incorporated association under the *Associations Incorporation Act 1981* (Qld) and its certificate under that Act is cancelled.⁸⁵

7.102 Similarly, on the issue of a certificate of incorporation under the Act for a corporation established by letters patent under the *Religious Educational and Charitable Institutions Act 1861* (Qld), the letters patent under the *Religious Educational and Charitable Institutions Act 1861* (Qld) are cancelled.⁸⁶

7.103 The Commission has been informed that, apart from the Corporation of the Roman Catholic Bishops of Queensland, nine church entities have been incorporated under the Act.⁸⁷

7.104 Section 25 of the Act provides that, in performing its objects or functions, an incorporated church entity⁸⁸ has all the powers, and the legal capacity, of an individual.

81 *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) pt 3.

82 *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) pt 4.

83 *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) ss 9(1)–(2), 16(1)–(2). A request for the incorporation of a religious institute, or for the establishment of an existing church corporation that is a religious institute, may be made only with the written consent of the religious institute’s competent authority: ss 9(2A), 16(2A).

84 *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) s 21(1)(a)–(b). See also s 22.

85 *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) s 23.

86 *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) s 24.

87 Information provided by the Office of Fair Trading, Department of Justice and Attorney-General, 12 September 2013, referring to Sisters of St Paul de Chartres — Australia; Federation of Parents and Friends Associations of Catholic Schools, Queensland; Net Ministries; Catholic Women’s League, Archdiocese of Brisbane; Emmanuel Community; Loreto College Coorparoo; Xavier Children’s Support Network; Mercy Partners; and Holy Ghost Fathers (Spiritans) Australia.

7.105 The Catholic Archdiocese of Brisbane, on behalf of the Queensland Catholic Church, has confirmed that all provisions of the Act 'are fully required and have operation and effect from day to day (e.g. the provisions relating to powers)', and that 'the Act is also required in relation to incorporation of new Catholic entities and provides a legislative facility for entities established under the *RECI Act* to transfer their registration to this Act'.

7.106 The Act has recently been amended at the request of the Archbishop of Brisbane to further assist the Church in carrying out its day-to-day operations.⁸⁹ The amendments:⁹⁰

provide for legislative recognition of existing legal entities and arrangements established under canon law, with the aim of enabling the church to operate more simply by reducing red tape. The amendments ... pertain to three separate facets of church property: civil law recognition of the creation of canon law trusts; extending consent provisions to include certain juridical persons, the canon law equivalent of legal persons; and pooling of investments.

The Commission's view

7.107 Unlike the other Acts considered in this chapter, the *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld) is a relatively recent Act. As explained above, it is the principal Act for facilitating the incorporation of Catholic Church entities and regulating the Church's operations.

7.108 The Commission does not recommend any change to this Act.

RECOMMENDATIONS

7.109 The Commission makes the following recommendations in relation to the Acts considered in this chapter:⁹¹

Rec	Act	Provision	Recommendation
<i>Roman Catholic Relief Act 1830</i> (Qld)			
7-1	<i>Roman Catholic Relief Act 1830</i> (Qld)	Whole Act	Repeal.

⁸⁸ For pt 5 of the *Roman Catholic Church (Incorporation of Church Entities) Act 1994* (Qld), which includes s 25, 'incorporated church entity' includes a church entity that is an incorporated association under the *Associations Incorporation Act 1981* (Qld) and a corporation established by letters patent under the *Religious Educational and Charitable Institutions Act 1861* (Qld) that has not been established under the 1994 Act.

⁸⁹ *Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013* (Qld) pt 5.

⁹⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 15 October 2013, 3144 (JP Bleijie, Attorney-General and Minister for Justice).

⁹¹ Recommendation 7-6 corrects a minor typographical error in s 6(1) of the *Roman Catholic Church (Northern Lands) Vesting Act 1941* (Qld). The recommendation is self-explanatory and is not discussed elsewhere in this chapter.

Rec	Act	Provision	Recommendation
7-2	<i>Oaths Act 1867 (Qld)</i>	Consequential amendment to section 1	Omit— 'the oath prescribed by the Act of Parliament commonly called the <i>Roman Catholic Relief Act 1830</i> or'.
<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>			
7-3	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Preamble paras 7, 8	Omit.
7-4	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Sections 3–4, 8, 13, 15	Omit.
7-5	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Section 5(1)	Omit— 'and as registered lessee in respect of the leases referred to in schedule 2'.
7-6	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Section 6(1)	Omit— 'form time to time'. Insert— 'from time to time'.
7-7	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Schedules 1–4	Omit.
7-8	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Remaining provisions	Relocate the remaining provisions to the <i>Roman Catholic Church Lands Act 1985 (Qld)</i> .
7-9	<i>Roman Catholic Church (Northern Lands) Vesting Act 1941 (Qld)</i>	Whole Act	Repeal.
<i>Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945 (Qld)</i>			
7-10	<i>Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945 (Qld)</i>	Whole Act	Repeal.
<i>Roman Catholic Church Lands Act 1985 (Qld)</i>			
7-11	<i>Roman Catholic Church Lands Act 1985 (Qld)</i>	Schedules 1–4	Omit real property descriptions (but retain the Schedules).
<i>Roman Catholic Church (Incorporation of Church Entities) Act 1994 (Qld)</i>			
7-12	<i>Roman Catholic Church (Incorporation of Church Entities) Act 1994 (Qld)</i>	Whole Act	No change.

Chapter 8

Salvation Army

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INTRODUCTION

8.1 The terms of reference require the Commission to review the *Salvation Army (Queensland) Property Trust Act 1930* (Qld).

8.2 In developing its recommendations for this review, the Commission consulted with the Commissioner of the Salvation Army (Australia Eastern Territory), who also represented the views of the Divisional Commander of the Salvation Army (South Queensland Division) and the Divisional Commander of the Salvation Army (Central and North Queensland Division), as well as the Salvation Army (Queensland) Property Trust.

BACKGROUND

8.3 The Salvation Army was formed, originally under the name the ‘Christian Mission’, in England in 1865.¹

8.4 The origins and doctrines of the Salvation Army were recited in a deed poll, under the hand and seal of its founder, William Booth, dated 7 August 1878 and enrolled in the Chancery Division of the High Court of Justice in England on 13 August 1878. Further provisions about the constitution and operation of the organisation were made in subsequent deeds poll in 1904 and 1920.²

8.5 The 1878 deed poll provided for the organisation to be under the sole oversight, direction and control of one person — the General — who was given wide powers to acquire and dispose of property for the purposes of the

¹ See The Salvation Army United Kingdom with the Republic of Ireland, *History*, The Salvation Army International Heritage Centre <<http://www.salvationarmy.org.uk/uki/HeritageHistory>>.

² Queensland, *Parliamentary Debates*, Legislative Assembly, 26 November 1930, 2568–9 (JS Kerr); *Salvation Army (Queensland) Property Trust Act 1930* (Qld) Preamble. See also *Salvation Army Act 1931*, 21 & 22 Geo 5, c xciv, Preamble.

organisation, and to appoint trustees in respect of any such property on the trusts declared by the General.³

8.6 A later deed poll, dated 1 June 1920, provided for property acquired in connection with the organisation's social work in the Commonwealth of Australia to be held, separately from its other property, upon trust for certain purposes,⁴ and for the social work in the Commonwealth of Australia to be under the oversight, direction and control of the General.⁵

8.7 Provision was also made in the various deeds poll for the General to appoint a successor upon his or her death, and for the circumstances in which the person in the office of the General could be removed in the event of incapacity or unfitness.⁶

8.8 The first General, William Booth, died on 20 August 1912 and was succeeded by William Bramwell Booth, his appointed successor.⁷ Several years later, on 13 February 1929, William Bramwell Booth was removed from the office of General on the basis of ill health and was replaced by Edward John Higgins. A short time later, on 16 June 1929, William Bramwell Booth died.⁸

8.9 At the time of his death, William Bramwell Booth had not transferred the property vested in him on trust for the Salvation Army to his successor, Edward Higgins. It was not until January 1930 that the executors of William Bramwell Booth's estate, in whom the property had vested, were directed by the High Court of Justice to transfer the property to the new General.⁹

8.10 Following the death of William Bramwell Booth, the Salvation Army in England sought to make a number of constitutional changes to its organisation,

³ *Salvation Army (Queensland) Property Trust Act 1930* (Qld) Preamble. The 1878 deed poll created the office of 'General Superintendent' but that title was later changed to the 'General'. The change in title was recited in a deed poll, under the hand of William Booth, dated 26 July 1904 and enrolled in the Supreme Court of Judicature of England on 27 July 1904.

⁴ The Preamble to the *Salvation Army (Queensland) Property Trust Act 1930* (Qld) recites that those purposes were:

the social, temporal, and moral welfare and the improvement of the poorer and more needy classes of society, and all persons who were destitute, or vicious, or feeble-minded, or suffering from injuries or sickness or ill-health, or orphans, or for children needing care in orphanages or reformatories in the said Commonwealth, and for other charitable purposes in connection with the said Commonwealth, in such ways and by such means as the said William Bramwell Booth or other the director, as thereafter defined for the time being, of the social work, should at any time or from time to time think fit, subject nevertheless to the provisos therein contained.

⁵ *Salvation Army (Queensland) Property Trust Act 1930* (Qld) Preamble.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ See the report of the decision of Clauson J in *Higgins v Sneath* in 'High Court of Justice Chancery Division — Salvation Army Funds to be Transferred to General Higgins', *The Times* (London) 22 January 1930, 5.

including the formation of a trustee company to hold its property in place of the sole trusteeship of the General.¹⁰

8.11 Following a similar measure introduced in New South Wales in 1929,¹¹ the *Salvation Army (Queensland) Property Trust Act 1930* (Qld) was introduced in order to transfer the property of the Salvation Army in Queensland to a body corporate with perpetual succession to hold and deal with the property as trustee. As was explained when the Bill was introduced into Parliament:¹²

the Bill deals with the property of the Salvation Army in Queensland. At present it is held in the name of a General living in England, which is the organisation's headquarters; and it is proposed to transfer all property, with the exception of business undertakings, belonging to the Salvation Army, to a trust consisting of not more than seven and not less than five members.

8.12 The Queensland Bill was in virtually the same terms as the legislation previously introduced in New South Wales. Similar legislation was also enacted in the other Australian jurisdictions.¹³

8.13 Overall, these legislative measures were intended to overcome the difficulties of transferring the property of the Salvation Army in its various places of operation out of the name of the deceased former General, and to provide for the continuity of property ownership and the management of that property despite future changes in the office of the General.¹⁴

SALVATION ARMY (QUEENSLAND) PROPERTY TRUST ACT 1930 (QLD)

8.14 The *Salvation Army (Queensland) Property Trust Act 1930* (Qld) establishes a body corporate to hold and deal with property of the Salvation Army in Queensland upon and subject to certain trusts and deeds. The Act commenced on 24 December 1930.

8.15 The provisions of the Act are of three main types: those dealing with the incorporation, composition and operation of the body corporate under the name of the 'Salvation Army (Queensland) Property Trust';¹⁵ those dealing with the vesting

¹⁰ See generally R Carton (revised R Brown), 'Higgins, Edward John (1864–1947)', *Oxford Dictionary of National Biography* (Oxford University Press, 2004, online ed Jan 2011); The Salvation Army International, *The High Council* (2013) <<http://www.salvationarmy.org/ihq/highcouncil>>; and The Salvation Army Australia Southern Territory, *Salvation Army Generals* (2012–2013) <<http://www.salvationarmy.org.au/en/Who-We-Are/History-and-heritage/Salvation-Army-generals/>>. In Great Britain and Northern Ireland, this was achieved by the *Salvation Army Act 1931*, 21 & 22 Geo 5, c xciv, later amended by the *Salvation Army Act 1980* (UK) c xxx.

¹¹ See *The Salvation Army (New South Wales) Property Trust Act 1929* (NSW).

¹² Queensland, *Parliamentary Debates*, Legislative Assembly, 26 November 1930, 2568 (JS Kerr).

¹³ See *Salvation Army Property Trust Act 1934* (ACT); *Salvation Army (Northern Territory) Property Trust Act* (NT); *The Salvation Army (South Australia) Property Trust Act 1931* (SA); *Salvation Army (Tasmania) Property Trust Act 1930* (Tas); *The Salvation Army (Victoria) Property Trust Act 1930* (Vic); *The Salvation Army (Western Australia) Property Trust Act 1931* (WA).

¹⁴ See, for example, New South Wales, *Parliamentary Debates*, Legislative Council, 22 October 1929, 713 (WEV Robson); South Australia, *Parliamentary Debates*, Legislative Assembly, 21 October 1931, 1989–90 (A Thompson).

¹⁵ *Salvation Army (Queensland) Property Trust Act 1930* (Qld) ss 3–6, 14(1)–(2), 15–17.

of property in that body corporate (in respect of property acquired before and after the commencement of the Act);¹⁶ and those dealing with the way in which property is to be held, and may be dealt with, by the body corporate.¹⁷

Section 7: Vesting of property held in the name of the deceased former General and others

8.16 Section 7 of the *Salvation Army (Queensland) Property Trust Act 1930* (Qld) deals with the vesting of property that was held upon trust in the name of the deceased former General (William Bramwell Booth) and others immediately before the commencement of the Act.

8.17 It vests the following property in the Salvation Army (Queensland) Property Trust without any conveyance or transfer:

- all real property situate in the State and personal property that ‘were at the time of his death held by and now stand in the name of William Bramwell Booth’ as General of the Salvation Army or Director of the social work of the Salvation Army upon the trusts of the respective deeds poll;
- all other real property situate in the State and personal property (including shares in the Gas Corporation of Queensland Limited¹⁸):
 - that ‘were at the time of his death’ held by and now stand in the name of William Bramwell Booth, or that he would but for his death have been entitled to hold or to have registered in his name; or
 - that are held by or stand in the name or names of any other person or persons in trust for the Salvation Army in Queensland (or any of its constituent parts) or to which the Salvation Army in Queensland is otherwise entitled (other than any property held by the Salvation Army Auxiliary Company of Australia Pty Ltd).

8.18 Section 7 further provides that the property vested by that provision is vested:

- upon the trusts, with the powers, authorities and discretions, and subject to the provisions, of the Act and of the recited deeds poll of 1878, 1904 and 1920 upon which the property was held at the time of the passing of the Act;¹⁹ and

¹⁶ *Salvation Army (Queensland) Property Trust Act 1930* (Qld) ss 7, 18, 19(1), 21–24.

¹⁷ *Salvation Army (Queensland) Property Trust Act 1930* (Qld) ss 7–13, 14(3)–(4), 19(2).

¹⁸ It appears that the Gas Corporation of Queensland Limited was deregistered in 1997 and formed part of Envestra (Qld) Limited, which remains registered: see Australian Securities & Investments Commission, ‘Gas Corporation of Queensland: Business Name Summary’ and ‘Envestra (Qld) Limited: Company Summary’ (21 August 2013) ASIC Connect <<https://connectonline.asic.gov.au/>>. Formerly, several provisions of the Act had referred to the Brisbane Gas Company: *Salvation Army (Queensland) Property Trust Act 1930* (Qld) ss 7, 24 (Act as passed). It was amended in 1995 to change the references in those provisions to the Gas Corporation of Queensland Limited: *Statute Law Revision Act (No 2) 1995* (Qld) s 4, sch 1.

¹⁹ The deeds poll are recited in the Preamble to the Act. See [8.4]–[8.6] above.

- subject to any special trusts (if any) upon which the property may be held, any reservation, mortgage, charge, encumbrance, lien or lease affecting the property, and any resulting trust or trust of any such property in favour of the donor or any person other than the Salvation Army.

8.19 The property that was held upon trust in the name of the deceased former General and others immediately before the commencement of the Act was vested in the Salvation Army (Queensland) Property Trust, without any conveyance or transfer, when section 7 of the Act commenced on 24 December 1930.

8.20 The Commissioner of the Salvation Army for the Australia Eastern Territory explained that the Salvation Army (Queensland) Property Trust still holds property acquired on trust by virtue of section 7. As a consequence, the Commissioner considered that section 7 still plays an important role because it enables the Trust to demonstrate how it acquired title to that property and sets out the trusts on which the property is held. The Commissioner also noted that there is a provision to the effect of section 7 in similar legislation in each other Australian jurisdiction, and that the repeal or amendment of that provision could detract from the compliance, management and administrative efficiencies arising from having similar legislation. The Commissioner therefore considered that section 7 should be retained.

The Commission's view

8.21 The Commission notes that section 7 of the *Salvation Army (Queensland) Property Trust Act 1930* (Qld) could be repealed on the basis that its original purpose of vesting particular property in the Salvation Army (Queensland) Property Trust was achieved when that provision commenced. However, the Commission also considers that, in light of the complicated trusts to which the property is subject, and the extensive history of the Salvation Army and its property holdings, section 7 continues to serve a useful purpose by enabling the Salvation Army (Queensland) Property Trust to more easily demonstrate the legal basis of how it acquired such property and the terms of the trusts on which that property is held. The Commission is therefore of the view that section 7 should be retained.

Section 24: Registration of interests in respect of shares

8.22 There are provisions in the *Corporations Act 2001* (Cth) that impose requirements in respect of company registers, including share registers. Section 168 of the Act requires all companies and registered schemes to maintain a register of members and, if relevant, a register of option holders and a register of debenture holders. Section 169 of the Act requires the register of members to contain certain details about each member, including the member's name and address, the date on which the member's name was entered on the register, as well as other details, such as the shares held by each member. The Act also makes provision for the correction of registers and the registration of transfers of shares.²⁰

²⁰

Corporations Act 2001 (Cth) ss 175, 1071A–1071B, 1071D.

8.23 However, section 24 of the *Salvation Army (Queensland) Property Trust Act 1930* (Qld) makes provision for the ‘Gas Corporation of Queensland Limited and every other company’ to register the Salvation Army (Queensland) Property Trust in respect of any shares of the company that are vested in the Trust, and for that purpose to make every entry, cancellation or correction in the registers of shares as to the company concerned appears necessary and proper. That provision predates the commencement of the *Corporations Act 2001* (Cth), and would appear to operate concurrently with the provisions of that Act.²¹

8.24 The Commissioner of the Salvation Army for the Australia Eastern Territory opposed the amendment or repeal of section 24 on the basis that its amendment or repeal could have ‘unintended and adverse consequences’.

The Commission’s view

8.25 In light of the submission of the Commissioner of the Salvation Army for the Australia Eastern Territory, and given the beneficial nature of the provision, the Commission is of the view that section 24 of the Act should be retained.

RECOMMENDATION

8.26 The Commission makes the following recommendation in relation to the *Salvation Army (Queensland Property) Trust Act 1930* (Qld):²²

Rec	Act	Provision	Recommendation
8-1	<i>Salvation Army (Queensland) Property Trust Act 1930</i> (Qld)	Preamble, unnumbered paragraph 9 (after ‘to determine and enforce the laws and’)	Omit— ‘tot’. Insert— ‘to’.

²¹ The provisions of pt 1.1A of the *Corporations Act 2001* (Cth), including s 5E, which deal generally with the interaction between the corporations legislation and State and Territory laws apply in this context.

²² Recommendation 8-1 corrects a minor typographical error in the Preamble to the *Salvation Army (Queensland Property) Trust Act 1930* (Qld). The recommendation is self-explanatory and is not discussed elsewhere in this chapter.

Chapter 9

Uniting Church in Australia

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INTRODUCTION

9.1 The Uniting Church in Australia was formed on 22 June 1977 by the union of the Congregational Church, the Methodist Church and certain congregations of the Presbyterian Church of Australia.¹

9.2 The terms of reference require the Commission to review the following Acts relating to the Uniting Church or to the churches that ultimately united to form the Uniting Church:²

- *Uniting Church in Australia Act 1977 (Qld)*;
- *Queensland Congregational Union Act 1967 (Qld)*;
- *Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)*;
and

¹ In Queensland, see *Uniting Church in Australia Act 1977 (Qld)* ss 5 (definitions of 'the appointed day' and 'the Uniting Churches'), 6–7. In *Bailey v The Uniting Church in Australia Property Trust (Qld)* [1984] 1 Qd R 42, Sheahan J observed (at 44) that the Presbyterian Church is a 'live and "continuing" church'.

² Certain Acts relating to the Presbyterian Church are considered in Chapter 6.

- *Wesleyan Methodist Trust Property Act 1853* (Qld).

9.3 The Commission's recommendations about these Acts were developed following consultation with:

- The Uniting Church in Australia Queensland Synod;
- the Executive of the Queensland Congregational Fellowship; and
- Queensland Baptists.

UNITING CHURCH IN AUSTRALIA ACT 1977 (QLD)

9.4 The *Uniting Church in Australia Act 1977* (Qld) provides for the formation of the Uniting Church in Australia in accordance with the Basis of Union,³ and establishes a body corporate, called 'The Uniting Church in Australia Property Trust (Q)' (the 'trust'),⁴ in which is vested, as trustee,⁵ property of the various churches that joined the union.⁶

9.5 Generally, the trust consists of the moderator, secretary and property officer of the synod (who are ex officio members) and five other persons appointed by the synod.⁷

9.6 Subject to specified exceptions, section 24 of the Act provides for the divesting from the Congregational Church in Queensland, the Corporation of the Methodist Church of Australasia in Queensland and the Presbyterian Church of Queensland of certain property that was vested in, or vested in trust for, those entities immediately before the commencement of the Act, and for the vesting of that property in the trust.⁸

9.7 The vesting of property that was previously held by or for the Congregational Church in Queensland and the Corporation of the Methodist Church of Australasia in Queensland occurred when section 24(1)–(2) of the Act commenced on 22 June 1977, while the vesting of property that was previously held by or for the Presbyterian Church of Queensland occurred when section 24(3) of the Act commenced on 7 August 1980.

³ *Uniting Church in Australia Act 1977* (Qld) ss 6–7, 9(2), sch. Similar legislation was also enacted in the other Australian jurisdictions: see *Uniting Church in Australia Act 1977* (ACT); *Uniting Church in Australia Act 1977* (NSW); *Uniting Church in Australia Act* (NT); *The Uniting Church in Australia Act 1977* (SA); *Uniting Church in Australia Act 1977* (Tas); *The Uniting Church in Australia Act 1977* (Vic); *Uniting Church in Australia Act 1976* (WA).

⁴ *Uniting Church in Australia Act 1977* (Qld) ss 11–12.

⁵ *Uniting Church in Australia Act 1977* (Qld) s 23(a).

⁶ *Uniting Church in Australia Act 1977* (Qld) s 24. See generally Queensland, *Parliamentary Debates*, Legislative Assembly, 5–6 April 1977, 2932 (WD Lickiss, Minister for Justice and Attorney-General).

⁷ *Uniting Church in Australia Act 1977* (Qld) s 13(1).

⁸ See, in particular, *Uniting Church in Australia Act 1977* (Qld) s 24(1)–(3A).

Section 5: Interpretation

9.8 Section 5 of the Act defines ‘the basis of union’ to mean the basis of union set forth in the Schedule.

9.9 The Schedule to the Act sets out the original text of the Basis of Union. This is the foundational document of the Uniting Church, setting out its central affirmations and outlining the roles of the different councils of the Church, including the presbyteries, the synods, and the assembly.⁹

9.10 In 1992, the Assembly Standing Committee of the Uniting Church approved a revised edition of the Basis of Union. The 1992 edition made some slight changes to the language of this document, in particular, in relation to the use of gender-inclusive language.¹⁰ As a result of these changes, the text of the Basis of Union that is set out in the Schedule to the Act is no longer in identical terms to the revised Basis of Union.

The Commission’s view

9.11 Given that the Basis of Union set out in the Schedule to the *Uniting Church in Australia Act 1977* (Qld) has undergone revisions since the Act was passed, the definition of ‘the basis of union’ in section 5 of the Act should be changed to refer to the basis of union set forth in the schedule, ‘as amended from time to time’.¹¹

Section 16: Chairperson and secretary of trust

9.12 Section 16 of the *Uniting Church in Australia Act 1977* (Qld) provides for the appointment of trust members to be the chairperson and secretary of the trust. Under section 16(1), appointments to these positions are to be made by the synod.

9.13 However, section 16(2) creates an exception to section 16(1), providing that the ‘*inaugurating assembly*’ shall appoint one member of the trust ‘as *first constituted*’ to be chairperson and another member to be secretary of the trust. The inaugurating assembly was the first assembly of the Uniting Church in Australia, consisting of members of the three churches that entered the Union and appointed in accordance with the provisions of the Basis of Union.¹²

9.14 The Uniting Church in Australia Queensland Synod has informed the Commission that, in its view, section 16(2) can now be repealed, noting that a consequential amendment would need to be made to section 16(1).

⁹ Uniting Church in Australia Assembly, *Basis of Union* (2013) <<http://assembly.uca.org.au/basis-of-union-1971-1992>>.

¹⁰ Ibid; <<http://assembly.uca.org.au/images/stories/HistDocs/basisofunion1992.pdf>>.

¹¹ *Acts Interpretation Act 1954* (Qld) sch 1 defines ‘amend’, for an instrument or provision of an instrument, to include ‘alter or vary’.

¹² *Uniting Church in Australia Act 1977* (Qld) s 5 (definition of ‘the inaugurating assembly’), sch Basis of union cl 15(e).

The Commission's view

9.15 The Commission is of the view that section 16(2) of the *Uniting Church in Australia Act 1977* (Qld), which provides the power for the inaugurating assembly to appoint the original chairperson and secretary of the trust, is obsolete and should be repealed.¹³

9.16 As a result, section 16(1) should be amended to omit the phrase 'Subject to subsection (2),'.

Section 31: Service of documents

9.17 Section 31 of the *Uniting Church in Australia Act 1977* (Qld) provides that the service of any 'writ, statement of claim, summons or other legal process' on the Uniting Church in Australia Property Trust (Q) may be effected by serving it on certain persons, including the moderator or secretary of the synod.

9.18 Writs and summonses were removed as originating processes when the *Uniform Civil Procedure Rules 1999* (Qld) were introduced. Those rules now provide for proceedings (other than appeals) to be started either by a 'claim' or an 'application'.¹⁴

9.19 In accordance with relevant transitional provisions, references in an Act or document to certain types of 'outdated' legal process are taken to be references either to a claim or an application. In particular, the *Supreme Court of Queensland Act 1991* (Qld) provides that, in an Act or document, in the context of the Supreme Court and if otherwise appropriate, a reference to a 'writ of summons' is taken to be a reference to a 'claim', and a reference to an 'originating summons' is taken to be a reference to an 'application'.¹⁵ In addition, provision is made that, in the context of the District Court or a Magistrates Court, and if otherwise appropriate, a reference in an Act or document to a 'plaint or plaint and summons' is taken to be a reference to a 'claim'.¹⁶

The Commission's view

9.20 Given that writs and summonses were removed as originating processes by the *Uniform Civil Procedure Rules 1999* (Qld), section 31 of the *Uniting Church in Australia Act 1977* (Qld) should be amended to refer instead to 'claims' and 'applications'.

¹³ In this regard, the Commission notes that s 14 of the *Uniting Church in Australia Act 1977* (Qld), as passed, which provided for the *initial* membership of the trust, was omitted in 1996, presumably because it was obsolete as soon as the original members of the trust had taken office. That omission was made, pursuant to *Reprints Act 1992* (Qld) s 38, when the Act was reprinted in 1996.

¹⁴ *Uniform Civil Procedure Rules 1999* (Qld) r 8. See generally R Byrnes, LexisNexis, *Civil Procedure Qld Uniform Civil Procedure Rules* (at September 2013) [r 8.1].

¹⁵ *Supreme Court of Queensland Act 1991* (Qld) s 93.

¹⁶ *District Court of Queensland Act 1967* (Qld) s 149; *Magistrates Courts Act 1921* (Qld) s 61.

Section 33: Regulations etc

9.21 Section 33(1) of the *Uniting Church in Australia Act 1977* (Qld) provides that the assembly of the Uniting Church may 'make *regulations*, give directions and pass resolutions', not inconsistent with the Act, for the control, management and administration of, and dealings with, trust property.

9.22 Section 33(4) states that the '*Acts Interpretation Act 1954*, section 28A does not apply to regulations made under this section'.

The Commission's view

9.23 Section 28A of the *Acts Interpretation Act 1954* (Qld) made provision for the notification, tabling and disallowance of regulations made under a power conferred by an Act. However, that provision was repealed,¹⁷ and replaced by provisions in the *Statutory Instruments Act 1992* (Qld) that apply to the notification, tabling and disallowance of subordinate legislation.¹⁸

9.24 In view of the repeal of section 28A of the *Acts Interpretation Act 1954* (Qld), it is not appropriate for section 33(4) of the *Uniting Church in Australia Act 1977* (Qld) to continue to refer to that provision. However, to clarify that a regulation made under section 33(1) of the *Uniting Church in Australia Act 1977* (Qld) is not a regulation of the kind made under the *Statutory Instruments Act 1992* (Qld), section 33(4) of the *Uniting Church in Australia Act 1977* (Qld) should be replaced with a provision to the effect that a regulation made under section 33 of that Act is not subordinate legislation within the meaning of the *Statutory Instruments Act 1992* (Qld).

Section 39: Certain debts to be debts of the church

9.25 Section 39 of the *Uniting Church in Australia Act 1977* (Qld) deals with the debts of the various Churches and congregations that united to form the Uniting Church in Australia. It releases them from those debts and deems them to be the debts and liabilities of the Uniting Church in Australia:

39 Certain debts to be debts of the church

On and from the appointed day, the Congregational Church, the Methodist Church and the Presbyterian Church and their congregations and activities shall be released from all denominational and congregational debts in so far as they relate to property, congregations or activities of such of them as shall become part of the church, and all such debts shall be and be deemed to be debts or liabilities of the church.

9.26 The Uniting Church in Australia Queensland Synod has informed the Commission that, in its view, section 39 can be repealed.

¹⁷ *Statutory Instruments Act 1992* (Qld) s 48, sch 3 item 7 (Act as passed).

¹⁸ See *Statutory Instruments Act 1992* (Qld) ss 47, 49–50. Under that Act, 'subordinate legislation' includes certain types of statutory rules and other statutory instruments: s 9(1).

The Commission's view

9.27 The Commission is of the view that it is no longer necessary to retain section 39 of the *Uniting Church in Australia Act 1977* (Qld). Its effect in relation to both the Churches that were released from the specified debts and the Uniting Church in Australia will be preserved by the *Acts Interpretation Act 1954* (Qld).¹⁹

QUEENSLAND CONGREGATIONAL UNION ACT 1967 (QLD)

Background

9.28 At the annual meeting of the Congregational Union of Queensland held at Goodna on 19 October 1880, the Union adopted a Model Trust Deed, under which the corporation styled 'The President Secretary and Treasurer of the Queensland Congregational Union' (the 'Corporation')²⁰ would hold property on trust for any Church desiring the Corporation to accept the trust.²¹

9.29 The adoption of the Model Trust Deed had been prompted by the inconvenience arising from the appointment of individuals as trustees to hold land for Church purposes, and by a desire to enable the property of individual Churches to be vested in a body with perpetual succession.²² Under the schedule of trusts set out in the Model Trust Deed, the Corporation would hold lands upon trusts:

- when directed by a vote of at least two-thirds of the members of the particular Church, to sell the land and premises or to exchange the land and premises for other premises being situated within 20 miles of the land and premises so sold or exchanged (clause 8); and
- after discharging all incumbrances, to apply the residue of the sale proceeds towards the erection or purchase of other chapel land and premises being situated within 20 miles of the land and premises so sold, at such price and in such manner as directed by a vote of at least two-thirds of the members of the particular Church (clause 10).

Enactment of the *Queensland Congregational Union Act 1967* (Qld)

9.30 The *Queensland Congregational Union Act 1967* (Qld) was enacted to vary the terms of the trusts that applied to property that was held on trust by the Corporation for various Churches of the Queensland Congregational Union.²³

¹⁹ *Acts Interpretation Act 1954* (Qld) s 20(2)(c).

²⁰ The Corporation was constituted on 25 November 1862 by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld); *Queensland Congregational Union Act 1967* (Qld) s 2 (definition of 'corporation').

²¹ Congregational Union of Queensland, *Model Trust Deed* (JH Reynolds, 1881) 1; *Queensland Congregational Union Act 1967* (Qld) Preamble para 1.

²² Congregational Union of Queensland, *Model Trust Deed* (JH Reynolds, 1881) 1.

²³ See generally Queensland, *Parliamentary Debates*, Legislative Assembly, 28 November 1967, 1980–1 (PR Delamothe, Minister for Justice).

9.31 The Act is comprised of only two substantive provisions — sections 3 and 4.

Application of sale proceeds held by the Corporation on behalf of Churches that had ceased to exist

9.32 At the time the Act was passed, the Corporation was holding the proceeds of sale of certain lands and premises that had at one time been held by it on behalf of Churches of the Congregational Order at Charters Towers, Imbil, Maryborough, Roma and Tinana.²⁴ It was also holding the proceeds of sale of the lands and premises of a Church of the Congregational Order at Charters Towers, formerly the Charters Towers Welsh Church.²⁵

9.33 All of these Churches had been closed without directions having been given under the relevant trusts about the application of the proceeds of sale.²⁶

9.34 Section 3(1) of the Act provides that the Corporation is to apply the proceeds of sale of the church lands for such purpose or purposes whatsoever for the furtherance of Congregationalism anywhere in Queensland as the Executive Committee of the Queensland Congregational Union may direct.

Application of sale proceeds that might afterwards be held by the Corporation

9.35 Section 3(2) of the *Queensland Congregational Union Act 1967* (Qld) deals with the application of any proceeds of sale that come into the Corporation's hands, *after* the commencement of that Act, from the sale of church lands that were held on particular trusts where the Churches closed without any directions having been given in accordance with the relevant trusts about the application of the proceeds of sale. As with section 3(1), it provides that the Corporation is to apply the proceeds of sale of the church lands for such purpose or purposes whatsoever for the furtherance of Congregationalism anywhere in Queensland as the Executive Committee of the Queensland Congregational Union may direct.

Application of proceeds of sale beyond 20 miles of land sold

9.36 Section 4 of the Act deals with the application of the proceeds of sale of church lands and premises where the lands and premises were held by the Corporation at or before the commencement of the Act under the trusts in the Model Trust Deed.

9.37 Section 4(1) provides that the directions that the particular Church can give to the Corporation as to the application of the proceeds may, with the approval of the Executive Committee of the Queensland Congregational Union, include directions to apply the proceeds for any purpose for the furtherance of Congregationalism anywhere in Queensland, including the purchase of other lands and premises in Queensland for church purposes, whether or not the lands and

²⁴ *Queensland Congregational Union Act 1967* (Qld) Preamble para 1.

²⁵ *Queensland Congregational Union Act 1967* (Qld) Preamble para 2.

²⁶ *Queensland Congregational Union Act 1967* (Qld) Preamble para 3.

premises are situated within 20 miles of the lands and premises from which the sale proceeds arose.

9.38 Section 4(2) further provides that the terms of the trusts in relation to the application of the proceeds of sale are deemed to have been varied accordingly.

Vesting of property when the Uniting Church in Australia was formed

9.39 On the commencement of the *Uniting Church in Australia Act 1977* (Qld), the property that was vested in, or vested in trust for, the individual congregations of the Queensland Congregational Union that resolved to enter into union with the Methodist and Presbyterian Churches was divested from those congregations or from the trustees in question and became vested in the Uniting Church in Australia Property Trust (Q).²⁷

9.40 Further, that Act expressly freed and discharged that property from all of the provisions and trusts of the Queensland Congregational Union Model Trust Deed, as varied by the *Queensland Congregational Union Act 1967* (Qld).²⁸

Whether the *Queensland Congregational Union Act 1967* (Qld) serves any further purpose

9.41 The effectiveness of the variations of trust provided for by sections 3 and 4 of the Act depends on:

- the Corporation continuing to hold property on behalf of a Congregational Church (as it is the Corporation that is charged with the duty of applying the relevant proceeds); and
- the continued existence of the Executive Committee of the Queensland Congregational Union (as it is the Executive Committee that is to direct the purposes for which the proceeds are to be applied under section 3, and whose consent is required for the application of proceeds under section 4(1)).

9.42 The Executive of the Queensland Congregational Fellowship has informed the Commission that only three Congregational Churches did not enter into the union to form the Uniting Church in Australia — Pilgrim Congregational Church Bardon, Brisbane, Brassall Congregational Church, Ipswich and Raceview Congregational Church, Ipswich. Both the Pilgrim Congregational Church and the Brassall Congregational Church are incorporated under the *Associations Incorporation Act 1981* (Qld).²⁹

²⁷ *Uniting Church in Australia Act 1977* (Qld) ss 5 (definitions of 'the appointed day' and 'the Congregational Church'), 24(1). With the exception of s 24(3), the *Uniting Church in Australia Act 1977* (Qld) commenced on 22 June 1977.

²⁸ *Uniting Church in Australia Act 1977* (Qld) s 24(6).

²⁹ See Office of Fair Trading (Qld), *Check a Charity or Association* <<http://www.fairtrading.qld.gov.au/check-a-charity-or-association.htm>>. 'Raceview Congregational Fellowship' is also incorporated under the *Associations Incorporation Act 1981* (Qld).

9.43 The Executive of the Queensland Congregational Fellowship has also informed the Commission that, before the *Uniting Church in Australia Act 1977* (Qld) came into force, the property of the Pilgrim Congregational Church Bardon was transferred to trustees, and has since been transferred to the incorporated association established under the *Associations Incorporation Act 1981* (Qld).

9.44 As far as it is aware, the Executive Committee of the Queensland Congregational Union, which is the body referred to in sections 3 and 4 of the *Queensland Congregational Union Act 1967* (Qld), ceased to exist when the Uniting Church in Australia was formed.

9.45 The Executive of the Queensland Congregational Fellowship considers it unlikely that the *Queensland Congregational Union Act 1967* (Qld) would serve any future purpose, but suggested that there would be merit in repealing the Act but declaring it to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies.

9.46 The Uniting Church in Australia Queensland Synod did not express a view about whether the *Queensland Congregational Union Act 1967* (Qld) should be repealed or retained.

The Commission's view

9.47 As explained above, on the commencement of the *Uniting Church in Australia Act 1977* (Qld), the property that was vested in, or vested in trust for, the individual congregations of the Queensland Congregational Union that resolved to enter into union with the Methodist and Presbyterian Churches was divested from those congregations, or from the trustees in question, and became vested in the Uniting Church in Australia Property Trust (Q).³⁰

9.48 As a result, any property held on trust for those congregations by the body corporate styled 'The President Secretary and Treasurer of the Queensland Congregational Union' (the 'Corporation') was divested from the Corporation.

9.49 Given that only three congregations of the Queensland Congregational Union did not enter into the union to form the Uniting Church in Australia, it appears extremely unlikely that the Corporation held any property after the commencement of the *Uniting Church in Australia Act 1977* (Qld).

9.50 Further, to the extent that the Corporation held any property after that time, it appears that the mechanisms provided for in sections 3 and 4 of the *Queensland Congregational Union Act 1967* (Qld) for the application of various proceeds of sale would not be capable of operating because the Executive Committee of the Queensland Congregational Union ceased to exist when the Uniting Church in Australia was formed.

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See [9.39] above.

9.51 However, while it appears extremely unlikely that the *Queensland Congregational Union Act 1967* (Qld) could have any future operation, it has not been possible for the Commission to confirm that the Corporation did not hold any property after the commencement of the *Uniting Church in Australia Act 1977* (Qld).

9.52 The Commission therefore considers that the most appropriate course is to repeal the *Queensland Congregational Union Act 1967* (Qld), but declare the Act to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. This will ensure that the Act is removed from the Queensland statute book but will not end the continued effect of the Act (in the unlikely event that it might have some future application).

WESLEYAN METHODISTS, INDEPENDENTS, AND BAPTISTS CHURCHES ACT 1838 (QLD) AND WESLEYAN METHODIST TRUST PROPERTY ACT 1853 (QLD)

9.53 Both of these Acts were Acts of the Colony of New South Wales, which became part of the law of Queensland on its separation from New South Wales in 1859.³¹ They remain in force today as Queensland Acts.

9.54 The *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) is comprised of two sections. The *Wesleyan Methodist Trust Property Act 1853* (Qld) is comprised of a single section.

Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)

9.55 In 1836, the *Church Building Act 1836* was enacted in the Colony of New South Wales to provide government subsidies for the construction of church buildings.³² The Act provided that, where private money of not less than £300 was raised towards the building of a church or chapel or Minister's dwelling, the Governor was authorised to match that contribution with the expenditure of public money. The Act required that, before any sum of money was issued from the Colonial Treasury for that purpose, the persons contributing towards the building were to nominate trustees for the approval of the Governor.³³

9.56 Once approved, the land that was the site for the church, chapel or Minister's dwelling was to be conveyed to the approved trustees (and to the heirs of the survivor of the trustees) on trust for the erection, maintenance and repair of the said church, chapel or Minister's dwelling.³⁴

³¹ Queensland, *Queensland Government Gazette*, No 3, 24 December 1859, 9, Proclamation cl 20; *Australian Colonies Act 1861* (Imp) 24 & 25 Vict, c 44, s 3.

³² *An Act to promote the building of Churches and Chapels and to provide for the maintenance of Ministers of Religion in New South Wales* (NSW) 7 Wm 4, No 3 (repealed).

³³ *Church Building Act 1836* (NSW) 7 Wm 4, No 3 (repealed) s 7.

³⁴ *Church Building Act 1836* (NSW) 7 Wm 4, No 3 (repealed) s 7. A similar provision dealt with the conveyance to trustees of churches and chapels that were already built, but that were repaired and maintained at public expense: s 10.

9.57 Although the *Church Building Act 1836* was an Act of the New South Wales Colony, for a short time, it continued as an Act of the Colony of Queensland following its separation from New South Wales. The *Church Building Act 1836* (Qld) was repealed by the *State Aid Discontinuance Act 1860* (Qld) on 7 August 1860.

Purposes of the Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)

Facilitating a change in trustees

9.58 The *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) is effectively confined to lands that were granted under the *Church Building Act 1836*.

9.59 One of the purposes of the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) was to facilitate a change of trustees from the original trustees appointed in accordance with the *Church Building Act 1836* (or the heirs of the survivor of the trustees) to new trustees.

9.60 The *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) provided that, as soon as a chapel or chapel and minister's dwelling belonging to any of the three religious societies was erected, the trustees appointed under the *Church Building Act 1836* (Qld), or the heirs of the survivor, must, if requested in writing by certain specified persons, transfer the trust premises and lands to the trustees nominated and elected according to the usages of, respectively, the Wesleyan Methodists, the Independents and the Baptists.³⁵

Provision for enrolling a model trust deed in the Supreme Court of New South Wales

9.61 The *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) further provided that the new trustees to whom the trust premises and lands were conveyed were to hold the premises and lands on the trusts stated and set forth in a model deed of such society that was to be enrolled in the Supreme Court of New South Wales within two years of the passing of that Act (that is, by 17 August 1840).³⁶

9.62 The Act made provision for the Registrar of the Supreme Court of New South Wales to receive and enrol in the Court a model deed of conveyance and trust that was presented by:³⁷

- the Chairperson or Senior Minister of the New South Wales District on behalf of the Wesleyan Methodists;
- the Minister, or a majority of the members, of the Independent Church, Pitt Street, Sydney on behalf of the Independents; and

³⁵ *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) s 1(1).

³⁶ *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) s 1(1).

³⁷ *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) s 2(1).

- the Minister, or a majority of the members, of the Baptist Church, Bathurst Street, Sydney on behalf of the Baptists.

9.63 A model trust deed was filed on behalf of the Wesleyan Methodists.³⁸ However, the Commission has not been able to ascertain whether a model trust deed was ever filed on behalf of the Independent Church, Pitt Street, Sydney or the Baptist Church, Bathurst Street, Sydney.

Appointment of new trustees by the Registrar of the Supreme Court of New South Wales

9.64 The *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) provided that, if the original trustees under the *Church Building Act 1836* (Qld), or the heirs of the survivor of the trustees, left the Colony of New South Wales or became incapacitated to act, or neglected or refused to transfer the trust premises and lands for six months after being requested to do so, the fee simple of the trust estate passed to the Registrar of the Supreme Court of New South Wales, who was authorised to make the transfer to the trustees who were elected in the manner mentioned above.³⁹

Wesleyan Methodist Trust Property Act 1853 (Qld)

9.65 The Preamble to the *Wesleyan Methodist Trust Property Act 1853* (Qld) recites that, from time to time, land was granted by the Crown to trustees on behalf of the Wesleyan Methodist religious society for the erection of school-houses and for other purposes.

9.66 The purpose of the Act was, in particular circumstances, to authorise and require the persons to whom *any land* (and not merely land on which a church or chapel and minister's dwelling was to be erected) was granted or conveyed by the Crown, or by any person, on trust for the Wesleyan Methodist religious society, to convey the trust premises and lands to trustees nominated and elected according to the usages of that society.⁴⁰ The land so vested was to be held by the trustees upon the trusts declared in the Model Deed dated 27 February 1840 that was enrolled in the Supreme Court of New South Wales on or about 11 August 1840 (being the Model Deed for which section 1(1) of the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) had made provision).

Relevance of the 1838 and 1853 Acts to property of the Wesleyan Methodists

9.67 The extent to which the 1838 and 1853 Acts could continue to affect any property of the Wesleyan Methodists turns on the effect of several later Acts.

³⁸ See *Wesleyan Methodist Trust Property Act 1853* (Qld) s 1.

³⁹ *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) s 1(2).

⁴⁰ *Wesleyan Methodist Trust Property Act 1853* (Qld) s 1.

9.68 In 1893, the *Wesleyan Methodist Church Property Trust Act 1893* (Qld)⁴¹ was passed to change the trusts on which any lands of the Wesleyan Methodist Church were held.

9.69 Section 3 of the Act provided for the Registrar of Titles of Queensland to enrol 'The Wesleyan Methodist Model Deed of Queensland, 1892', which had been approved by the New South Wales and Queensland Conference of the Australasian Wesleyan Methodist Church, of which the Wesleyan Methodist Church in Queensland had become an integral part.⁴²

9.70 Section 4 further provided that all Church lands held before the commencement of that Act upon the trusts of the Model Deed dated 27 February 1840 and enrolled in the Supreme Court of New South Wales, or upon any other trusts, together with certain other land, were to be held, from the commencement of that Act, upon the trusts stated in the Wesleyan Methodist Model Deed of Queensland, 1892.

9.71 The section specifically provided that the Church lands were not subject to any former or other trusts or provisions, thus freeing the lands from the terms of the trusts contained in the Model Deed dated 27 February 1840, to which they had become subject by virtue of the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) and the *Wesleyan Methodist Trust Property Act 1853* (Qld).

9.72 The *Methodist Union Act 1905* (Qld)⁴³ subsequently confirmed the union of the Wesleyan Methodist Church in Queensland and the Primitive Methodist Church in Queensland as the Methodist Church of Australasia,⁴⁴ and provided that, from 1 January 1898, the Methodist Church of Australasia was deemed to have been, and to be, the Wesleyan Methodist Church for the purposes of the provisions of the *Wesleyan Methodist Church Property Trust Act 1893* (Qld).⁴⁵ The 1905 Act further provided that all Church lands that were, at the passing of that Act, held upon the trusts of the Wesleyan Methodist Model Deed of Queensland, 1892 were to be held on those trusts for the Methodist Church of Australasia.⁴⁶

41 The *Wesleyan Methodist Church Property Trust Act 1893* (Qld) does not form part of this review. Most of its provisions were repealed by the *Methodist Church Property Acts Amendment Act 1964* (Qld) s 10, sch, and the remaining provisions were repealed by the *Statute Law Revision Act (No 2) 1995* (Qld) s 5(1), sch 6. The *Statute Law Revision Act 1995* (Qld) s 5(3), sch 9 and the *Statute Law Revision Act (No 2) 1995* (Qld) s 5(3), sch 9 declared the *Wesleyan Methodist Church Property Trust Act 1893* (Qld) to be a law to which s 20A of the *Acts Interpretation Act 1954* (Qld) applies.

42 See *Wesleyan Methodist Church Property Trust Act 1893* (Qld) (repealed) Preamble, s 3.

43 The *Methodist Union Act 1905* (Qld) does not form part of this review. A number of the provisions of that Act were repealed by the *Methodist Church Property Acts Amendment Act 1964* (Qld) s 10, sch, and the remaining provisions were repealed by the *Statute Law Revision Act 1995* (Qld) s 5(1), sch 6.

44 *Methodist Union Act 1905* (Qld) (repealed) ss 3–4(1).

45 *Methodist Union Act 1905* (Qld) (repealed) ss 1, 4(3).

46 *Methodist Union Act 1905* (Qld) (repealed) s 7(1).

9.73 Subsequently, the *Methodist Church Property Acts Amendment Act 1964* (Qld)⁴⁷ vested all Methodist Church property, including lands held by trustees pursuant to the provisions of the 1893 and 1905 Acts, in the corporation styled 'The Corporation of The Methodist Church of Australasia in Queensland', which was incorporated by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld) on 5 March 1964.⁴⁸

9.74 On the commencement of the *Uniting Church in Australia Act 1977* (Qld), the property that was vested in the Corporation of the Methodist Church of Australasia in Queensland became vested in the Uniting Church in Australia Property Trust (Q) and, subject to that Act, was freed and discharged from all of the provisions and trusts of the *Methodist Church Property Acts Amendment Act 1964* (Qld) or any other Act affecting Methodist Church property in Queensland.⁴⁹

Relevance of the 1838 Act to property of Queensland Baptists

9.75 Whether the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) could have any continuing relevance to Queensland Baptists turns on a number of factual questions.

9.76 The Act is effectively confined to lands that were granted under the *Church Building Act 1836*. As explained above, although that Act was an Act of the Colony of New South Wales, for a short time, it continued as an Act of the Colony of Queensland following separation from New South Wales in 1859. The *Church Building Act 1836* (Qld) was repealed by the *State Aid Discontinuance Act 1860* (Qld) on 7 August 1860.

9.77 If land in Queensland was granted to the Baptist Church under the *Church Building Act 1836* and a model deed of trust was enrolled in the Supreme Court of New South Wales by 17 August 1840,⁵⁰ the land would continue to be subject to those trusts unless it was subsequently freed from the trusts (as it was, in the case of the Wesleyan Methodists, by the *Wesleyan Methodist Church Property Trust Act 1893* (Qld)).

9.78 Queensland Baptists was not able to confirm whether any land was granted in Queensland to the Baptist Church under the provisions of the *Church Building Act 1836*, of either New South Wales or Queensland, before 7 August 1860.⁵¹ However, Queensland Baptists has informed the Commission that, in its view, the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838*

⁴⁷ The *Methodist Church Property Acts Amendment Act 1964* (Qld) does not form part of this review. It was repealed by the *Statute Law Revision Act 1995* (Qld) s 5(1), sch 6 and declared by s 5(3), sch 9 of that Act to be a law to which s 20A of the *Acts Interpretation Act 1954* (Qld) applies.

⁴⁸ *Methodist Church Property Acts Amendment Act 1964* (Qld) (repealed) ss 2 (definitions of 'The Corporation' and 'Methodist Church property'), 3.

⁴⁹ *Uniting Church in Australia Act 1977* (Qld) ss 5 (definition of 'appointed day'), 24(2), (6). With the exception of s 24(3), the *Uniting Church in Australia Act 1977* (Qld) commenced on 22 June 1977.

⁵⁰ See [9.61] ff above.

⁵¹ See [9.76] above.

(Qld) could be repealed and declared to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies.

The Commission's view

9.79 As explained above, the terms of the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) applied to the Wesleyan Methodists, the Baptists and the Independents.

9.80 Although certain Church lands of the Wesleyan Methodists had, under the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) or the *Wesleyan Methodist Trust Property Act 1853* (Qld), become subject to the trusts contained in the Model Deed dated 27 February 1840, the effect of the *Wesleyan Methodist Church Property Trust Act 1893* (Qld) was to free those lands from the trusts to which they had become subject by virtue of those Acts.

9.81 As a result, neither the 1838 Act nor the 1853 Act would have any further application to lands that had been held on trust for the Wesleyan Methodist Church.

9.82 However, the Commission has not been able to ascertain the extent to which the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld) applied, if at all, to any property that might be held by Queensland Baptists. Nor has the Commission been able to obtain any information about whether the Act ever applied to the property of any Independents in Queensland.

9.83 In those circumstances, the Commission considers that the most appropriate course would be to repeal the *Wesleyan Methodists, Independents, and Baptists Churches Act 1838* (Qld), but declare it to be a law to which section 20A(3) of the *Acts Interpretation Act 1954* (Qld) applies. That would ensure that its effect does not end because of its repeal.

9.84 However, the *Wesleyan Methodist Trust Property Act 1853* (Qld), which applied only to the Wesleyan Methodist Church, can simply be repealed. As explained above, although that Act provided for certain Church lands to be held upon the trusts declared in the Model Deed dated 27 February 1840, those lands have subsequently been freed from those trusts.⁵²

RECOMMENDATIONS

9.85 The Commission makes the following recommendations in relation to the Acts considered in this chapter:

⁵²

See [9.67] ff, [9.80] above.

Rec	Act	Provision	Recommendation
Uniting Church in Australia Act 1977 (Qld)			
9-1	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 5, definition of 'the basis of union'	Insert at the end of the current definition— 'as amended from time to time'.
9-2	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 16(1)	Omit— 'Subject to subsection (2),'.
9-3	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 16(2)	Omit.
9-4	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 31	Omit— 'writ, statement of claim, summons'. Insert— 'claim, application'.
9-5	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 33(4)	Omit. Insert— 'A regulation made under this section is not subordinate legislation within the meaning of the <i>Statutory Instruments Act 1992</i> '.
9-6	<i>Uniting Church in Australia Act 1977 (Qld)</i>	Section 39	Omit.
Queensland Congregational Union Act 1967 (Qld)			
9-7	<i>Queensland Congregational Union Act 1967 (Qld)</i>	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)			
9-8	<i>Wesleyan Methodists, Independents, and Baptists Churches Act 1838 (Qld)</i>	Whole Act	Repeal. Declare the Act to be a law to which section 20A(3) of the <i>Acts Interpretation Act 1954 (Qld)</i> applies.
Wesleyan Methodist Trust Property Act 1853 (Qld)			
9-9	<i>Wesleyan Methodist Trust Property Act 1853 (Qld)</i>	Whole Act	Repeal.

Chapter 10

Boonah Show Ground

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INTRODUCTION

10.1 As explained in Chapter 2, the *Land Act 1994* (Qld) provides for the Governor in Council to 'grant, in fee simple in trust, unallocated State land for use for a community purpose'. Similar provision, for the grant in trust of Crown land required for a public purpose, was also made in earlier land legislation.¹

10.2 All existing deeds of grant in trust are regulated under Chapter 3, Part 1 of the *Land Act 1994* (Qld).² The land legislation has been treated as a code in relation to trusts created by deeds of grant in trust, and the *Trusts Act 1973* (Qld) does not apply, and is taken never to have applied, to such trusts.³

The original grant of land

10.3 The *Boonah Show Ground Act 1914* (Qld) relates to a particular parcel of land, described in the Act as portion 119, County of Ward, Parish of Dugandan.⁴ On 20 October 1914, that land was granted by Deed of Grant No 103853 to Ernest Thomas Bell, John England, and William Farley as trustees and to their successors forever upon trust 'for the purpose of a show ground and for no other purpose whatsoever'.⁵

1 See [2.34] above.

2 The *Land Act 1994* (Qld) s 451(1) provides that all existing deeds of grant are taken to be deeds of grant in trust under the *Land Act 1994* (Qld) for the purpose for which they were granted.

3 See [2.35]–[2.36] above.

4 *Boonah Show Ground Act 1914* (Qld) Preamble para 1. The land is described in the Preamble as having an area of 21 acres, 1 rood and 2 perches. The current real property description of the land is lot 119 on Crown Plan 853080, County of Ward, Parish of Dugandan (Title Reference 18821213). Deed of Grant of Land in Trust vol 8821 folio 213 (Title Reference 18821213) describes it as having an area of 8.7840 hectares.

5 *Boonah Show Ground Act 1914* (Qld) Preamble.

10.4 The three trustees were members of the Boonah Show Society, a community organisation that was formed in 1897.⁶ Ernest Thomas Bell was the Show Society President at the time.⁷

Subsequent changes to the land and the trustees

10.5 In 1922, owing to the opening of roads through the land and consequent alterations to the boundary, the trustees surrendered the land contained in Deed of Grant No 103853 to the Crown in consideration of a new Deed of Grant (No 110843), which granted to the trustees a parcel of land comprising most of the surrendered land.⁸

10.6 The Boonah Show Society ultimately incorporated in 1993, 'allowing it to have its own name on the land deeds rather than trustees, which had always been a problem when trustees died or left the district'.⁹ In 1994, the title to the land was vested in the Boonah Show Society Inc, a body corporate with perpetual succession incorporated under the *Associations Incorporation Act 1981* (Qld), as trustee for showground purposes.¹⁰

10.7 Pursuant to section 342 of the *Land Act 1962* (Qld),¹¹ the interest in the land was then surrendered to the Crown,¹² and a fresh Deed of Grant of Land in Trust dated 3 February 1995 was issued, granting lot 119 on Crown Plan 853080 to the Boonah Show Society Inc to hold the land in trust for a showground and for no

⁶ Boonah Show Society, *History and Facts* <http://www.boonahshowsociety.org.au/history_and_facts.htm>.

⁷ See A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 41.

⁸ Department of Natural Resources and Mines (Qld), Deed of Grant No 110843 vol 1533 folio 103 (Title Reference 11533103). The Deed of Grant records that the surrender of the original land was made under s 8 of the *Land Act 1910* (Qld), which provided:

Whenever, by reason of the opening or closing of a road through or adjoining any land held in fee-simple, the description of the land as comprised in the existing instruments of title has ceased to be a convenient description of the land to which, after such opening and closing and the consequent alterations of boundary, any owner is entitled, such owner may surrender to the Crown his title to the land: and upon such surrender a fresh deed or fresh deeds of grant shall be issued comprising the land to which, after such opening or closing, such owner is entitled.

⁹ A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 155.

¹⁰ Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 11533103).

¹¹ That section provided that the trustees of land granted in trust shall not have power to sell or transfer any land under their control, but may, with the approval of the Governor in Council, surrender and transfer such land to the Crown. Subsection (2), as amended by s 56 of the *Land Act Amendment Act 1987* (Qld), further provided that:

- (a) The trustees of land granted in trust may, for the purposes of surrendering part of their title to that land, with the approval of the Governor in Council, surrender to the Crown their title to that land.
- (b) Upon such surrender a fresh deed of grant in trust for the land the trustees desire to retain shall be issued to those trustees.

¹² Department of Natural Resources and Mines (Qld), *Form 1–Transfer* (20 December 1994) No 700410834.

other purpose whatsoever.¹³ That was subsequently changed to ‘showground, sport and recreation purposes and for no other purposes whatsoever’.¹⁴

OVERVIEW OF THE ACT

10.8 The *Boonah Show Ground Act 1914* (Qld) has only one substantive provision, section 3, which gives the trustees a limited power to mortgage and regulates the application of the moneys raised by any mortgage of the showground.¹⁵

10.9 Section 3(1) provides that it is lawful for the trustees to raise any sum of money not exceeding \$4000 and, for that purpose, to mortgage the showground to secure the moneys so raised. This limit has not been increased since the Act was passed in 1914, the original Act referring to the amount of £2000.

10.10 Section 3(2) provides that any money so raised must be applied, firstly, in payment of any existing liabilities incurred in erecting buildings and making improvements in or upon the showground and, secondly, in and towards the erection of other buildings and making further improvements.

10.11 Section 3(3) is a protective provision for mortgagees who deal with the trustees. It provides that any mortgagee of the showground shall not be called upon to see to the application of the mortgage moneys.

BACKGROUND TO THE INTRODUCTION OF THE ACT

10.12 In 1897, 5 acres of land was temporarily reserved for the use of the Dugandan Pastoral and Agricultural Society,¹⁶ and the first show was held on that ground in 1898.¹⁷ However, by 1904 the ground was considered to be too small, and a committee was established to investigate new sites. The committee faced a number of obstacles, including the fact that the land could not be sold without the permission of the government.¹⁸

10.13 Eventually, in 1909, the Department of Lands agreed to sell the old ground and purchase land belonging to John Hooper for the purpose of a showground.¹⁹

¹³ Department of Natural Resources and Mines (Qld), Deed of Grant of Land in Trust vol 8821 folio 213 (Title Reference 18821213).

¹⁴ Department of Natural Resources and Mines (Qld), Historical Title Search (Title Reference 18821213).

¹⁵ *Boonah Show Ground Act 1914* (Qld) s 2 defines ‘showground’ to mean ‘the land comprised in the aforementioned [Deed of Grant No 103853, dated 20 October 1914]’.

¹⁶ Queensland, *Queensland Government Gazette*, No 138, 5 June 1897, 1334. The elected trustees of that land were James Cossart, WH Abell and JW Haygarth: see A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 3.

¹⁷ Boonah Show Society, *History and Facts* <http://www.boonahshowsociety.org.au/history_and_facts.htm>.

¹⁸ *Trustees of Public Lands Act 1869*, 33 Vic No 2, s 3 prohibited trustees of Crown lands granted upon trusts for public purposes and for no other from selling, transferring or mortgaging the lands.

¹⁹ See A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 32.

However, the Department emphasised that it would only give the amount of money necessary to buy the new ground.²⁰

10.14 In 1910, Hooper's deeds were surrendered for the new show ground,²¹ and the first show was held there in 1911.²² The show ground was extended in 1913 by the purchase of a block of land on either side of one entrance and the piece of road between them.²³ In 1914, the land was renamed portion 119 Dugandan, and a new Deed was granted.²⁴

10.15 As mentioned above, the original trustees under the 1914 Deed of Grant were members of the Boonah Show Society. Members of the Boonah Show Society Committee had signed a personal guarantee of £1200, which was required to erect improvements on the new show ground and shift the buildings from the old show ground.²⁵ The purpose of the Act was to enable the trustees to mortgage the land comprised in the deed of grant 'for the sum of £2,000 for the purpose of erecting buildings and making improvements upon the show ground, after payment of any existing liabilities in respect of the buildings or improvements already erected upon the ground'.²⁶

10.16 It was necessary, at that time, to enact special legislation to give the trustees the power to mortgage the land because section 185 of the *Land Act 1910* (Qld) provided expressly that, notwithstanding anything contained in any Act, the trustees of land granted in trust or the trustees of a reserve 'shall not have power to sell, transfer, or mortgage any land under their control'.²⁷

10.17 However, section 185 of the *Land Act 1910* (Qld) was later amended to enable the trustees of any land granted in trust, with the approval of the Governor in Council, to mortgage the land in order to raise funds for effecting permanent improvements on the land, or for adding to permanent improvements already effected on such land, or for such other purposes as may be from time to time approved by the Governor in Council, notwithstanding any restriction contained or implied in the deed of grant or the Act.²⁸

10.18 Similar provision was made in section 351 of the *Land Act 1962* (Qld).

20 Ibid.

21 Ibid 36.

22 Ibid 35, 38.

23 Queensland, *Queensland Government Gazette*, No 93, 19 April 1913, 1056.

24 See A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 37.

25 Legislative Assembly Select Committee, Parliament of Queensland, *Boonah Show Ground Bill* (1914) 1078 (evidence of ET Bell). See also A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 41.

26 Queensland, *Parliamentary Debates*, Legislative Assembly, 7 December 1914, 2475 (AH Barlow).

27 See also A Collyer, *Gather Them In: A History of the Boonah Show 1898–1998* (Boonah Show Society Inc, 1998) 41.

28 *Land Act 1910* (Qld) s 185(3), inserted by the *Land Acts Amendment Act 1929* (Qld) s 61 and amended by the *Land Acts Amendment Act 1934* (Qld) s 9.

10.19 Today, under the *Land Act 1994* (Qld), a trustee of a deed of grant in trust that issued before the Act commenced (for this provision, 1 July 1995) may mortgage the deed of grant in trust, although the approval of the Minister is required.²⁹ The Act also provides that amounts raised by mortgaging trust land must be used on the trust land and for the purpose for which the trust was granted.³⁰

10.20 Section 52 of the *Land Act 1994* (Qld) provides generally that ‘the trustee of trust land may take all action necessary for the maintenance and management of the land’, provided that the action is consistent with the purpose for which the land was granted in trust, the *Land Act 1994* (Qld), and any conditions of appointment of the trustee.³¹

WHETHER THE ACT CAN BE REPEALED

10.21 As explained above, the purpose of the *Boonah Show Ground Act 1914* (Qld) was to empower the trustees to raise money by mortgage in order to carry out certain improvements at the time. It was necessary to pass legislation to facilitate this, because trustees of land granted under a deed of grant in trust were prohibited from mortgaging the land by section 185 of the *Land Act 1910* (Qld).

10.22 However, that Act was subsequently amended to enable such trustees, with the approval of the Governor in Council, to raise money by mortgage to effect or maintain improvements.³² As mentioned above, the *Land Act 1994* (Qld) now provides that a trustee of a deed of grant in trust issued before the Act commenced may mortgage the deed of grant in trust, although the Minister’s approval is required.³³

10.23 Although the power to mortgage conferred under the *Boonah Show Ground Act 1914* (Qld) does not require the approval of the Minister, it is limited to the sum of \$4000. In that sense, it is more restricted than the power given under the *Land Act 1994* (Qld), which is not subject to a monetary limit.

10.24 The Boonah Show Society has informed the Commission that it sees no reason to retain the *Boonah Show Ground Act 1914* (Qld) and has no objection to its repeal.

²⁹ *Land Act 1994* (Qld) s 67(2), (4). The Minister’s approval may be subject to conditions: s 67(5). A trustee of a deed of grant in trust issued after that date may not ordinarily mortgage it, unless the deed was issued because of a surrender under s 358 and the deed being surrendered was issued before the commencement, or the deed was issued under s 493: s 67(3). Ministerial approval is also required: s 67(4).

³⁰ *Land Act 1994* (Qld) s 67(6).

³¹ *Land Act 1994* (Qld) s 52(1)–(2). The Minister may approve action that is inconsistent with the purpose for which the land was granted in trust if satisfied that the action will not diminish the purpose for which the land was granted in trust, or adversely affect any business in the area surrounding the reserve or land granted in trust: s 52(3).

³² *Land Act 1910* (Qld) s 185(3).

³³ *Land Act 1994* (Qld) s 67(2), (4).

The Commission's view

10.25 Given that the *Land Act 1994* (Qld) enables a trustee of a deed of grant in trust issued before the Act commenced to mortgage the deed of grant in trust (with the approval of the Minister), the original reason for enacting the *Boonah Show Ground Act 1914* (Qld) no longer exists. Further, the amount that may be raised by mortgage under the Act is now so small that the Act serves no real purpose.

10.26 In these circumstances, the Commission is of the view that the *Boonah Show Ground Act 1914* (Qld) is no longer needed and should be repealed.

RECOMMENDATION

10.27 The Commission makes the following recommendation in relation to the *Boonah Show Ground Act 1914* (Qld):

Rec	Act	Provision	Recommendation
10-1	<i>Boonah Show Ground Act 1914</i> (Qld)	Whole Act	Repeal.

Chapter 11

Guides Queensland

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INTRODUCTION

11.1 The terms of reference require the Commission to review the *Guides Queensland Act 1970 (Qld)*.

11.2 The Commission's recommendations about the Act were developed following consultation with Girl Guides Queensland.

GUIDES QUEENSLAND ACT 1970 (QLD)

Background

11.3 The Girl Guides Association was incorporated in England by royal charter in 1922.¹

11.4 In 1926, the Girl Guides Association of Australia became an independent association, with full membership in the parent association in England. State associations were organised under their own constitutions and were self-governing. The Queensland branch, known as the 'Girl Guides Association (Queensland, Australia)', adopted its constitution pursuant to the royal charters and by-laws of the parent association in England.²

1

See Privy Council Office, *List of All Charters Granted Since the 13th Century* <<http://privycouncil.independent.gov.uk/royal-charters/chartered-bodies/>>; Queensland, *Parliamentary Debates*, Legislative Assembly, 5 March 1970, 2442 (PR Delamothe, Minister for Justice). The original royal charter was supplemented by another in 1949. A copy of the royal charter of incorporation of the Guides Association, as amended from time to time, is available at Girlguiding, *The Guide Association Royal Charter and Bye-laws* <https://www.girlguiding.org.uk/system_pages/footer_navigation/royal_charter_by-laws.aspx>.

2

Queensland, *Parliamentary Debates*, Legislative Assembly, 5 March 1970, 2442 (PR Delamothe, Minister for Justice).

11.5 In the years preceding 1970, membership in the Queensland association and the property acquired by the various local branches of the association expanded significantly. The property of each local branch was vested in various trustees.³

11.6 By that time, the governing bodies of some of the other State associations had been incorporated by special Acts of Parliament.⁴

11.7 The *Guides Queensland Act 1970* (Qld) was introduced to incorporate the governing body of the Queensland association as a body corporate by the name of the 'Girl Guides Association (Queensland, Australia)', to provide for the transfer of the property of the various local branches of the association to the new corporate entity (subject to the trusts upon which the property was given or acquired), and to confer on the corporate entity various powers.⁵

11.8 In 1997, the Act was amended to reflect an apparent change of name of the Queensland association.⁶ The Act now provides that the corporation named the 'Girl Guides Association (Queensland, Australia)', as formerly established, is continued in existence under the name 'Guides Queensland'.⁷

11.9 A number of other technical and miscellaneous amendments have also been made to the Act.⁸

Section 4: Registration of documents

11.10 Section 4 imposes obligations on Guides Queensland (the 'corporation')⁹ and the Department of Justice and Attorney-General with respect to the lodgment and registration of certain documents with the Department.

11.11 When the Act was passed, section 4(1) required the corporation to cause a copy of the following documents to be lodged with the Registrar of Companies at Brisbane:

- as soon as practicable after the commencement of the Act, the royal charters of the parent association in England and the constitution of the Queensland association; and

³ Ibid.

⁴ See, eg, *Girl Guides Association (New South Wales) Incorporation Act 1951* (NSW); *Girl Guides' Association Act 1957* (Tas); *Girl Guides Association Act 1952* (Vic).

⁵ See *Girl Guides Association Act 1970* (Qld) ss 3, 5–8 (Act as passed). The Act commenced on 10 April 1970. The name of the Act was amended by *Justice and Other Legislation (Miscellaneous Provisions) Act (No 2) 1997* (Qld) ss 41–42.

⁶ See *Justice and Other Legislation (Miscellaneous Provisions) Act (No 2) 1997* (Qld) ss 41–44, 51.

⁷ *Guides Queensland Act 1970* (Qld) s 3(1).

⁸ See *Girl Guides Association Act Amendment Act 1982* (Qld); *Public Service (Administrative Arrangements) Act (No 2) 1990* (Qld) s 3, sch 6; *Justice and Other Legislation (Miscellaneous Provisions) Act (No 2) 1997* (Qld) ss 45–50.

⁹ *Guides Queensland Act 1970* (Qld) s 2 (definition of 'corporation').

- with as little delay as possible, any new, amended or supplementary royal charter granted to the parent association or the corporation, and all amendments to the constitution or any new constitution adopted, after the commencement of the Act.

11.12 Section 4(4) of the Act (as passed) also required certain other documents, relating to the membership and place of business of the corporation, to be similarly lodged.

11.13 Following amendments made in 1982, section 4 now requires these documents to be lodged with the 'chief executive', that is, the Director-General of the Department of Justice and Attorney-General.¹⁰

11.14 Section 4(2) requires the chief executive to:

- keep in the chief executive's office all copies of the documents and records transmitted to the chief executive pursuant to section 4; and
- register the royal charters of the parent association and the constitution of Guides Queensland and any amendments thereto as if they were the rules of an incorporated association.

11.15 Section 4(3) provides that every document to which the Act applied immediately before the commencement of the 1982 amendments shall, on and from that commencement, be deemed to have been lodged in the office of the chief executive.

11.16 Girl Guides Queensland has informed the Commission that, in its view, section 4(3) could be repealed.

The Commission's view

11.17 The purpose of enacting section 4(3) of the *Guides Queensland Act 1970* (Qld) was to ensure that documents to which the Act applied immediately before 20 April 1982 (when the 1982 amendments commenced) are treated as having been lodged in accordance with the registration requirements of the section. The Commission is of the view that section 4(3), being a transitional provision and having served its purpose, should be repealed. This would not affect the previous operation of section 4(3) or its declaratory effect for its transitional purpose.¹¹

Section 6: Transfer of property to the corporation

11.18 Section 6 empowers the corporation to call for a transfer of certain property to it, and establishes the procedure for doing so. It also includes provisions dealing with the holding of property by 'controlled groups', and provides for the

¹⁰ *Guides Queensland Act 1970* (Qld) s 4(4), (7), amended by *Girl Guides Association Act Amendment Act 1982* (Qld) s 2; *Public Service (Administrative Arrangements) Act (No 2) 1990* (Qld) s 3, sch 6. As to 'chief executive', see *Acts Interpretation Act 1954* (Qld) s 33(11)(b); *Administrative Arrangements Order (No 2) 2013* (Qld) s 2.

¹¹ *Acts Interpretation Act 1954* (Qld) ss 20(2)(b), 20A(2)(a).

enforcement of liabilities and rights against or by the corporation (as the case may be).

Controlled groups

11.19 Section 6(2)–(2A) deals with property held by ‘controlled groups’ and dealt with by ‘controlling authorities’.

11.20 ‘Controlled group’ is defined in section 2 to mean a group ‘registered with the corporation as a controlled group by any organisation approved by the Association or the corporation’. ‘Controlling authority’ is also defined in section 2 to mean ‘the person or committee appointed by the body concerned to exercise its functions in respect of a group registered as a controlled group’.

11.21 Section 6(2)–(2A) provides that, generally, property held by a controlled group may be held in trust and disposed of by the controlled group, but that, if the property is dealt with contrary to the conditions and trusts upon which it is held, the corporation may, by written notice, require the transfer of the property to the corporation:

- (2) Notwithstanding subsection (1), any real property or personal property that is vested in, or held by or on behalf of, or that is given, devised or bequeathed to, a controlled group may, subject to any express trust affecting it, be held in trust for such purposes, and be disposed of in such manner, as the controlling authority of that group may determine.
- (2A) However, if a controlling authority deals with any real property or personal property in a manner contrary to the conditions and trusts upon which it is held, the corporation may, by notice in writing, require the controlling group by which the controlling authority is appointed, or that controlling authority, to transfer, convey or assign, or to cause to be transferred, conveyed or assigned, that property to the corporation.

11.22 Those provisions were included in the Act to cover the possibility, that had not yet arisen at that time, that property might be held by controlled groups. As was explained in the Second Reading to the Bill:¹²

It is normal procedure in the southern States for Guide property to be held on trust by controlled groups, but I understand that this practice has not been followed in Queensland. Nowadays there is closer co-operation between all States on the Girl Guide movement, and with the possibility of a change of policy in this regard by the Queensland association at some future time, a provision similar to that in the relevant legislation of the southern States was inserted to cover the possibility of such a contingency arising here.

11.23 Girl Guides Queensland has informed the Commission that, in its view, section 6(2)–(2A) of the *Guides Queensland Act 1970* (Qld) could be repealed.

¹²

Queensland, *Parliamentary Debates*, Legislative Assembly, 10 March 1970, 2530 (PR Delamothe, Minister for Justice).

The Commission's view

11.24 The submission of Girl Guides Queensland suggests that it is no longer necessary to make provision in section 6(2)–(2A) of the *Guides Queensland Act 1970* (Qld) for Guide property in Queensland to be held by controlled groups. Given that Guides Queensland does not seek to retain those provisions in the Act, section 6(2)–(2A) should be repealed. This would not affect their previous operation.¹³

11.25 As a consequence of the repeal of section 6(2)–(2A) of the *Guides Queensland Act 1970* (Qld), the reference in section 6(3) of the Act to subsection (2A) and the references in section 6(4)–(7) of the Act to ‘controlled group’ and ‘controlling authority’ should also be omitted.

Section 6: Applications to court

11.26 Section 6(4)–(7) deal with applications to the court in respect of the transfer of property to the corporation.

11.27 Section 6(4) relevantly provides that a person to whom a notice under section 6 is given may apply by summons to a Judge of the Supreme Court for an order that the transfer, conveyance or assignment of the property shall be subject to terms and conditions that the judge may determine. It empowers the judge to make such order with respect to the terms and conditions as the judge may think just and equitable, having regard to all the circumstances of the case.

11.28 Section 6(5) provides for the corporation to apply by summons to a judge of the Supreme Court for an order directing the registrar of the court to execute the transfer, conveyance or assignment of the property in certain circumstances, namely, where:

- after notice has been given under section 6, the person given the notice fails to execute the transfer, conveyance or assignment of the property to the corporation; or
- a person holds property in Queensland upon trust for or on behalf of or for the benefit of ‘the Association or any branch thereof or any local association, group, or other body formed under the policy organisation and rules of the Association’ in Queensland and the person’s whereabouts are unknown.

11.29 Section 6(6) empowers the judge on such an application, if satisfied of certain matters, to direct the registrar, by order, to execute the transfer, conveyance or assignment of the property to the corporation. The registrar must then do all such acts and things and execute all such instruments as may be necessary to transfer, convey or assign the property to the corporation, but subject to any charge, mortgage, lease or easement affecting it and any trust upon which it was held.

13

Acts Interpretation Act 1954 (Qld) s 20(2)(b).

11.30 Section 6(7) provides that acts or things done, and instruments executed, by the registrar under such an order are deemed to have been done or executed for and on behalf of the person concerned.

11.31 Section 6(4)–(5) provides for applications to be made ‘by summons to a Judge of the Supreme Court’. Section 6(6) also refers to a ‘summons’ heard by a Judge of the Supreme Court.

11.32 The ‘summons’ was removed as an originating process when the *Uniform Civil Procedure Rules 1999* (Qld) were introduced. Those rules now provide for proceedings (other than appeals) to be started either by a ‘claim’ or an ‘application’.¹⁴

11.33 Section 93 of the *Supreme Court of Queensland Act 1991* (Qld) provides, among other things, that a reference in an Act or document, in the context of the Supreme Court and if otherwise appropriate, to an ‘originating summons’ is taken to be a reference to an ‘application’. This provision would seem to apply to section 6(4)–(6) of the *Guides Queensland Act 1970* (Qld).

11.34 Girl Guides Queensland has informed the Commission that, in its view, the references in section 6(4)–(6) to a ‘summons’ should be replaced with references to an ‘application’.

The Commission’s view

11.35 The outdated references in section 6(4)–(6) of the *Guides Queensland Act 1970* (Qld) to a ‘summons’ should be replaced by a reference to an ‘application’.

Section 7: Limitations on dealing with property

11.36 Section 7 enumerates a number of limitations on when and how the corporation may deal with the property vested in it, particularly in relation to the lease, mortgage or sale of real property.

11.37 The opening clause of section 7 provides that the corporation is to deal with or dispose of the real and personal property vested in it ‘in such manner, subject to any special trust affecting the property, as the executive committee¹⁵ thinks fit’.

11.38 It then provides that, in the case of a lease, mortgage or sale of real property, this is subject to a number of conditions, namely, that:

- a proposed lease, mortgage or sale of real property shall be submitted to an ordinary meeting of the executive committee and shall be specially mentioned in the notice convening the meeting (section 7(a)); and

¹⁴ *Uniform Civil Procedure Rules 1999* (Qld) r 8.

¹⁵ The ‘executive committee’ means the executive committee of the State Council of Guides Queensland for the time being appointed under the constitution of Guides Queensland: see *Guides Queensland Act 1970* (Qld) s 2 (definitions of ‘executive committee’, ‘council’ and ‘constitution’).

- the proposed lease, mortgage or sale, if approved by the previous meeting, shall be submitted to the meeting and, if approved by not less than $\frac{2}{3}$ of those present when the motion is put, may be carried into effect by the executive committee (section 7(b)).

11.39 There is some lack of clarity in the drafting of section 7(b). Section 7(b) refers to approval at the 'previous meeting'. This appears to be a reference to the ordinary meeting referred to in section 7(a). It then refers to submission and approval at 'the meeting'. This could be taken as a reference to the same 'previous' meeting or to a meeting subsequent to the one mentioned in section 7(a). Originally, section 7(b) had referred to the 'next ordinary meeting' but those words were omitted when section 7 was amended in 1997.¹⁶

11.40 Girl Guides Queensland has informed the Commission that the drafting of section 7(b) of the Act should be clarified.

The Commission's view

11.41 The Commission is of the view that the drafting of section 7(b) of the *Guides Queensland Act 1970* (Qld) should be clarified to remove any ambiguity arising from the words 'the meeting' in that provision. Accordingly, section 7(b) should be amended to omit the reference to 'the meeting' and replace it with a reference to 'the next ordinary meeting'.

Section 13: Publication of orders in council

11.42 Section 12 of the *Guides Queensland Act 1970* (Qld) provides, amongst other things, that the Governor may, by order in council made on the application of the corporation, protect the names, uniforms, badges and flags used by the Girl Guides Association, the corporation or Guides Queensland.

11.43 Section 13 of the Act sets out the requirements for publication of an order in council made under the Act. It provides:

13 Publication of orders in council etc.

- (1) Every order in council made under this Act shall—
- (a) be published in the Gazette;

¹⁶

Section 7(a)–(b) was amended by *Justice and Other Legislation (Miscellaneous Provisions) Act (No 2) 1997* (Qld) s 47, commencing 5 December 1997, with the intention of 'streamlining the powers of Guides Queensland entering into a proposed lease, mortgage, or sale of real property': Explanatory Notes, Justice and Other Legislation (Miscellaneous Provisions) Bill (No 2) 1997 (Qld) 8. When the Act was passed, s 7(a)–(b) had provided:

- (a) a proposed lease, mortgage or sale of real property shall be submitted in the first instance to an ordinary meeting of the executive committee and shall be specially mentioned in the notice convening the meeting;
- (b) at the next ordinary meeting of the executive committee of which seven days' notice has been given, the proposed lease, mortgage or sale if approved by the previous meeting, and if approved by not less than two-thirds of those present when the motion is put, may be carried into effect by the executive committee; (emphasis added)

- (b) upon its publication in the Gazette, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein;
 - (c) take effect from the date of such publication;
 - (d) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and if not, then within 14 sitting days after the commencement of the next session.
- (2) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 days after any such order in council has been laid before it disallowing the same or part thereof, that order in council, or part thereof, shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further order in council.

11.44 If an order in council were to be made under the *Guides Queensland Act 1970* (Qld), it would be a 'statutory instrument' and, in particular, 'subordinate legislation' within the meaning of the *Statutory Instruments Act 1992* (Qld).¹⁷

11.45 The matters dealt with in section 13(1)(a), (c)–(d) and (2) are now covered by provisions of the *Statutory Instruments Act 1992* (Qld) in substantially similar terms, except that they provide for subordinate legislation ordinarily to be notified by publication on the Queensland legislation website, rather than in the Queensland Government Gazette.¹⁸ The provision in section 13(1)(b) is provided for in section 43(b) of the *Evidence Act 1977* (Qld), which provides that judicial notice must be taken of every statutory instrument.

11.46 Further, section 52 of the *Statutory Instruments Act 1992* (Qld) provides that:

52 Other notification, gazettal, tabling or disallowance provisions of no effect

A provision of another Act that provides for, or to the extent that it provides for, the notification, gazettal, tabling or disallowance of a particular type of subordinate legislation is of no effect.

11.47 Girl Guides Queensland has informed the Commission that, in its view, section 13 can now be repealed.

The Commission's view

11.48 In the Commission's view, section 13 of the *Guides Queensland Act 1970* (Qld), which deals with the publication, tabling, commencement, and disallowance of orders in council made under the Act, is no longer required because there are provisions in other Acts, namely the *Statutory Instruments Act 1992* (Qld) and the

¹⁷ See *Statutory Instruments Act 1992* (Qld) ss 7(1), (2)(a), (3), 8(a), 9(1)(b)–(c); *Statutory Instruments Regulation 2012* (Qld) s 2(1).

¹⁸ See *Statutory Instruments Act 1992* (Qld) ss 32(1)(a), 47, 49(1)–(2), 50(3)–(5), 51. Section 47 of that Act was amended to provide for electronic notification of subordinate legislation by *Treasury and Trade and Other Legislation Amendment Act 2013* (Qld) s 99.

Evidence Act 1977 (Qld), which are of general application and serve the same purpose. Accordingly, section 13 should be repealed.

RECOMMENDATIONS

11.49 The Commission makes the following recommendations in relation to the *Guides Queensland Act 1970* (Qld):

Rec	Act	Provision	Recommendation
11-1	<i>Guides Queensland Act 1970</i> (Qld)	Sections 4(3), 6(2)–(2A)	Omit.
11-2	<i>Guides Queensland Act 1970</i> (Qld)	Section 6(3) opening words	Omit— 'or (2A)'.
11-3	<i>Guides Queensland Act 1970</i> (Qld)	Section 6(4)– (7)	Omit references to— 'controlled group'; and 'controlling authority'.
11-4	<i>Guides Queensland Act 1970</i> (Qld)	Section 6(4)– (6)	Omit references to — 'summons'. Insert— 'application'.
11-5	<i>Guides Queensland Act 1970</i> (Qld)	Section 7(b)	After the words 'shall be submitted to the', insert— 'next ordinary'.
11-6	<i>Guides Queensland Act 1970</i> (Qld)	Section 13	Omit.

Chapter 12

Queensland Temperance League

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INTRODUCTION

12.1 The terms of reference require the Commission to review the *Queensland Temperance League Lands Act 1985* (Qld).

12.2 The Queensland Temperance League was constituted as a body corporate by letters patent, dated 29 June 1934, issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld).¹ The *Queensland Temperance League Lands Act 1985* (Qld) relates to the sale of certain land by the Queensland Temperance League in 1985, and the disposition of the proceeds of the sale.

12.3 In 1980, the Queensland Temperance League set up Drug Awareness and Relief Movement (DRUG ARM) as the program and service delivery arm of the organisation.² By letters patent, dated 1 July 1993, issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld), the Queensland Temperance League changed its name to Drug Awareness and Relief Foundation (Australia).³ Its trading name is DRUG ARM Australasia, and its business name is Healthy Options Australia.⁴

12.4 The Commission has consulted with Healthy Options Australia, on behalf of Drug Awareness and Relief Foundation (Australia), in relation to the review of the *Queensland Temperance League Lands Act 1985* (Qld).

1 Queensland, *Queensland Government Gazette*, No 106, 20 October 1934, 1089.

2 See Drug Arm Australasia, *Annual Report 2005–2006* (2006); Drug Arm, *Our History* (2011) <http://www.drugarm.com.au/content/standard.asp?name=About_History>.

3 Information provided by Healthy Options Australia, 2 December 2013.

4 See ABN Lookup, 'Drug Awareness and Relief Foundation (Australia): Current Details' (26 October 2013) <<http://abr.business.gov.au/SearchByAbn.aspx?SearchText=56385096184>>. Drug ARM Australasia is currently registered as an Australian public company limited by guarantee: 'Drug ARM Australasia: Company Summary' at ASIC Connect, *Organisation and Business Names Register* <<https://connectonline.asic.gov.au/>>.

BACKGROUND TO THE QUEENSLAND TEMPERANCE LEAGUE LANDS ACT 1985 (QLD)

12.5 On 11 July 1863, the Queensland Government granted the land at the corner of Ann and Edward Streets, Brisbane (the 'Ann Street land'), by deed of grant in trust, to the trustees of the Brisbane Total Abstinence Society. The land was granted for the purpose of erecting a temperance hall and for no other purpose whatsoever. The temperance hall was built on that site in 1869.⁵

12.6 The Brisbane Total Abstinence Society was constituted as a body corporate by letters patent, dated 30 December 1875, issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld). An Order in Council, dated 17 February 1876, declared the corporation of the Brisbane Total Abstinence Society to be the trustee of the land, and the land was vested in the Society on the trusts contained in the original deed of grant.⁶

12.7 In 1889, the Brisbane Total Abstinence Society purchased an alternative piece of land in Turbot Street with the intention of building a new temperance hall on it. However, due to general legislative restrictions that applied to trustees of land granted for public purposes, the Society was prevented from selling the remaining Ann Street land.⁷ The *Brisbane Temperance Hall Act 1889* (Qld) (the '1889 Act') was passed, at the request of the Society, to overcome this restriction.⁸

12.8 The purpose of the 1889 Act was to enable the Society to sell the remaining Ann Street land free from all trusts that had applied to the land immediately before the Act was passed, and to establish the trusts on which the land was to be held thereafter by the Society. The Act provided, among other things, for the Society to sell, mortgage or lease the land subject to certain conditions,⁹ and for the application of the proceeds of any sale or mortgage of the land.¹⁰ Ultimately, however, the Society did not proceed with its plans to build on the Turbot Street land and eventually sold that land.

12.9 The Brisbane Total Abstinence Society later merged with the Strength of Empire Movement to form the Queensland Prohibition League, which was constituted by letters patent, dated 11 March 1921, issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld). By Order in Council dated 24 March 1921, the letters patent of the Brisbane Total Abstinence Society were

⁵ See *Brisbane Temperance Hall Act 1889* (Qld) Preamble; Queensland, *Parliamentary Debates*, Legislative Assembly, 4 September 1985, 719–20 (NJ Harper, Minister for Justice and Attorney-General); *Re Queensland Temperance League* (Unreported, Supreme Court of Queensland, Williams J, 24 July 1985).

⁶ Queensland, *Parliamentary Debates*, Legislative Assembly, 4 September 1985, 720 (NJ Harper, Minister for Justice and Attorney-General).

⁷ *Trustees of Public Lands Act 1869* (Qld) s 3. That Act repealed the *Trustees of Public Lands Act 1864* (Qld), which had enabled trustees to apply to the Governor in Council for leave to sell, exchange, mortgage or lease lands granted to them for a public purpose.

⁸ Queensland, *Parliamentary Debates*, Legislative Assembly, 4 September 1985, 720 (NJ Harper, Minister for Justice and Attorney-General); *Re Queensland Temperance League* (Unreported, Supreme Court of Queensland, Williams J, 24 July 1985).

⁹ *Brisbane Temperance Hall Act 1889* (Qld) ss 2–6.

¹⁰ *Brisbane Temperance Hall Act 1889* (Qld) ss 7–8.

cancelled, thereby dissolving it, and the property of that corporation was vested in the Queensland Prohibition League, subject to the same trusts, powers, provisions, encumbrances and liabilities that attached to the property immediately before the Society was dissolved.¹¹

12.10 In the meantime, the decision was made to build a temperance hotel on the Ann Street land.¹² The temperance hall was demolished and the Canberra Hotel was built on the site. The hotel, which opened in 1929, included an area that was used as a temperance hall and for various other purposes.¹³

12.11 By letters patent, dated 29 June 1934, the Queensland Temperance League was constituted as a body corporate under the *Religious Educational and Charitable Institutions Act 1861* (Qld). By Order in Council, dated 18 October 1934, the letters patent of the Queensland Prohibition League were cancelled, dissolving that corporation and vesting all its property in the Queensland Temperance League, subject to the same trusts, powers, provisions, encumbrances and liabilities that attached to the property immediately before the corporation was dissolved.¹⁴

Sale of the Canberra Hotel

12.12 By the 1980s, it had become apparent that the Canberra Hotel was no longer commercially viable.¹⁵ In the first half of 1985, the League entered into a contract to sell the Ann Street land¹⁶ and an adjoining allotment of land in Ann Street that it had purchased in 1950 (the 'adjoining allotment').

12.13 To enable the Queensland Temperance League to expend the proceeds of sale for the general charitable purposes specified in its constitution, rather than the narrower purposes of the trust on which the Ann Street land was held, the League made a *cy pres* application to the Supreme Court of Queensland for an order under the *Trusts Act 1973* (Qld) to vary the purposes of the trust.¹⁷

11 Queensland, *Queensland Government Gazette*, No 114, 26 March 1921, 923.

12 'Queensland Temperance League and the History of Drug Arm' from Queensland Temperance League, *Annual Report* (1986).

13 M Sinnamon, 'Sobriety in Ruins – Demolition of the Canberra Hotel' on State Library of Queensland, *John Oxley Library Blog* (2 November 2012) <<http://blogs.slq.qld.gov.au/jol/2012/11/02/sobriety-in-ruins-demolition-of-the-canberra-hotel/>>.

14 Queensland, *Queensland Government Gazette*, No 106, 20 October 1934, 1089.

15 'Queensland Temperance League and the History of Drug Arm' from Queensland Temperance League, *Annual Report* (1986).

16 Portions of the Ann Street land had been resumed by the Commissioner of Railways in 1887, 1891 and 1900 respectively: 'Queensland Temperance League and the History of Drug Arm' from Queensland Temperance League, *Annual Report* (1986); Queensland, *Parliamentary Debates*, Legislative Assembly, 4 September 1985, 720 (NJ Harper, Minister for Justice and Attorney-General); *Re Queensland Temperance League* (Unreported, Supreme Court of Queensland, Williams J, 24 July 1985).

17 *Re Queensland Temperance League* (Unreported, Supreme Court of Queensland, Williams J, 24 July 1985). The *Queensland Temperance League* had submitted that the general charitable purposes specified in its constitution were wider than the trust on which the Ann Street land was held under the original deed of grant in trust. The Court, however, found that the League held the land on the trust created under the 1889 Act (which also did not encompass the wider purposes in its constitution).

12.14 The Attorney-General, however, argued that the sale itself might not be valid, due to the application of section 342 of the *Land Act 1962* (Qld) (which generally prohibited the sale of land granted under a deed of grant in trust).

12.15 Williams J, without finally deciding the *cy pres* application, found that the trust on which the League held the Ann Street land was not governed by the provisions of the *Land Act 1962* (Qld) because the 1889 Act extinguished the earlier trust that attached to the land under the deed of grant in trust, and established a new trust on which the land was held. His Honour also held that the League had the powers conferred on the trustee by that Act.¹⁸ Those powers included a power of sale, subject to certain conditions as to how the sale was to be made, including a requirement that the land should first be offered for sale by public auction.¹⁹

12.16 Since the League had entered into a contract to sell the Ann Street land and the adjoining allotment by private treaty (and had not first offered the Ann Street land for sale by public auction as required by the 1889 Act), it became necessary to obtain legislative authorisation for the sale. The *Queensland Temperance League Lands Act 1985* (Qld) was passed to enable the sale to be satisfactorily completed and to provide for the disposition of the proceeds of sale.²⁰

12.17 The Act commenced on 5 September 1985, and the contract for the sale of the Canberra Hotel was completed thereafter. The Canberra Hotel was demolished in 1987.²¹

OVERVIEW OF THE ACT

The League

12.18 The Act defines the 'league' as 'the Queensland Temperance League and, if it changes its name, the body whatever it is subsequently called'.²² As mentioned above, the name of the Queensland Temperance League was changed to Drug Awareness and Relief Foundation (Australia) by letters patent, dated 1 July 1993, issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld).

¹⁸ Williams J also held that s 32 of the *Trusts Act 1973* (Qld) did not confer a power of sale on trustees of a deed of grant in trust to which s 342 of the *Land Act 1962* (Qld) applied.

¹⁹ *Brisbane Temperance Hall Act 1889* (Qld) s 3.

²⁰ Queensland, *Parliamentary Debates*, Legislative Assembly, 4 September 1985, 721 (NJ Harper, Minister for Justice and Attorney-General).

²¹ M Sinnamon, 'Sobriety in Ruins – Demolition of the Canberra Hotel' on State Library of Queensland, *John Oxley Library Blog* (2 November 2012) <<http://blogs.slq.qld.gov.au/jol/2012/11/02/sobriety-in-ruins-demolition-of-the-canberra-hotel/>>.

²² *Queensland Temperance League Lands Act 1985* (Qld) s 2 (definition of 'league'). When the Act was first enacted, 'the League' was defined to mean the Queensland Temperance League, a body corporate incorporated under the *Religious Educational and Charitable Institutions Act 1861* (Qld). However, the definition was amended in 1993 to provide for a change of name for that body corporate: *Statute Law (Miscellaneous Provisions) Act 1993* (Qld) s 3, sch 1. See also *Religious Educational and Charitable Institutions Act 1861* (Qld) ss 6A–6B, which provide a mechanism for corporations under the Act to change their name.

Drug Awareness and Relief Foundation (Australia) continues to be incorporated as a body corporate under the provisions of that Act.

The lands

12.19 The Act relates to the sale of the Ann Street land (that is, the allotment of land at the corner of Ann and Edward Streets, Brisbane on which the Canberra Hotel was erected) and the adjoining allotment. Those allotments of land are described respectively in Schedules 1 and 2 to the Act as being:

- all that land situated in the County of Stanley, Parish of North Brisbane, City of Brisbane, being subdivision 2 of resubdivision A of subdivision A of allotment 5 of section 23 containing 1540.275m² more or less, contained in Certificate of Title volume 1799 folio 96; and
- all that land situated in the County of Stanley, Parish of North Brisbane, City of Brisbane, being subdivision 1 of allotment 4 of section 23 containing 809m² more or less, contained in Certificate of Title volume 5053 folio 42.

12.20 The Act defines those lands and the improvements on them as the 'lands'.²³

The vesting of the lands and the powers to deal with the lands

12.21 A number of provisions of the Act facilitated the sale of the lands.

Section 3: Vesting of lands free from trusts

12.22 Section 3 is a vesting provision. It declares that the lands vest in the Queensland Temperance League for an estate in fee simple subject to any rights and interests reserved to the Crown by the deeds of grant by which the lands were alienated by the Crown. It then removes those restrictions by providing that all trusts that applied to the lands when the Act commenced are extinguished.

12.23 In its submission, Healthy Options Australia, on behalf of Drug Awareness and Relief Foundation (Australia), expressed the view that section 3 could be repealed.

The Commission's view

12.24 As the lands vested in the Queensland Temperance League when the Act commenced (on 5 September 1985), section 3 serves no further purpose. Accordingly, the Commission considers that section 3 should be repealed. This would not disturb the vesting that occurred at that time.²⁴

²³ Queensland Temperance League Lands Act 1985 (Qld) s 2 (definition of 'lands'), schs 1–2.

²⁴ Acts Interpretation Act 1954 (Qld) s 20(2)(b)–(c).

Section 4: Power of the League to deal with lands

12.25 Section 4 provides that the Queensland Temperance League has and has always had the power to sell the lands, by public auction or private treaty, lease mortgage or otherwise deal with the lands. It also recognises the validity of any agreement for sale entered into before the Act came into force.

12.26 In its submission, Healthy Options Australia, on behalf of Drug Awareness and Relief Foundation (Australia), expressed the view that section 4 could be repealed.

The Commission's view

12.27 As mentioned above, the lands were sold by the Queensland Temperance League in 1985. As a consequence, section 4 serves no further purpose and should be repealed. This would not affect the validating effect of the provision or its previous operation.²⁵

Sections 6 to 8: Requirements for applying the proceeds of sale and holding real property

12.28 Section 6 of the *Queensland Temperance League Lands Act 1985* (Qld) deals with the disposition of the proceeds of sale of the lands. It provides that the League may apply the net proceeds of sale²⁶ and any income arising from the sale towards such of its purposes, as they exist from time to time, as the League thinks fit in accordance with its constitution and rules.

12.29 Sections 7 and 8 set out the terms on which the League must exercise its powers in relation to the holding of its assets as real property, and the purposes for which that property or the income of the property must be used. Those terms include a continuing requirement, under section 7(1), to hold real property to a value of 50% at the least of the net proceeds of sale of the lands.

12.30 Section 7(2) requires the League to apply the real property owned by it in compliance with section 7(1) or the net income arising from that property or both (whichever the League considers to be in its best interests) towards such of its purposes, as they exist from time to time, as it thinks fit in accordance with its constitution and rules.

12.31 Section 8 provides that the League shall not be taken to be in breach of its duty prescribed by section 7(1) by reason of a sale of real property that reduces the value of real property owned by it to less than the minimum value prescribed by that subsection if the sale is made with a view to the League's acquisition of other real property sufficient to comply with that subsection and such other real property is acquired by the League as soon as is practicable and prudent.

²⁵ *Acts Interpretation Act 1954* (Qld) ss 20(2)(b), (4)(d), 20A(2)(b).

²⁶ *Queensland Temperance League Lands Act 1985* (Qld) s 2 defines the 'net proceeds of sale' to mean the value of the consideration for the sale less all outgoings on account of liabilities reasonably incurred by the vendor in connection with negotiating and completing the sale other than outgoings directed to securing to the purchaser a title to the real property sold free of encumbrances and equities.

12.32 Healthy Options Australia, on behalf of Drug Awareness and Relief Foundation (Australia), has informed the Commission that the net proceeds of sale of the lands have been completely expended. In its view, therefore, section 6 could now be repealed.

The Commission's view

12.33 Section 6 of the *Queensland Temperance League Lands Act 1985* (Qld), together with sections 7 and 8 of the Act, form a legislative scheme that prescribes the trusts, terms and conditions for applying the proceeds of sale of the land and the holding of real property, originally by the League and then for its successors in title. In particular, section 7(1) requires that at least 50% of the value of the net proceeds of sale of the lands must be held as real property. In light of the relationship between sections 6, 7 and 8, the Commission considers that section 6 should be retained in the Act (irrespective of whether the proceeds of sale have been completely expended in accordance with the provisions of that section or not).

RECOMMENDATION

12.34 The Commission makes the following recommendation in relation to the *Queensland Temperance League Lands Act 1985* (Qld):

Rec	Act	Provision	Recommendation
12-1	<i>Queensland Temperance League Lands Act 1985</i> (Qld)	Sections 3–4	Omit.

Chapter 13

Returned & Services League of Australia (Queensland Branch)

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INTRODUCTION

13.1 The Returned & Services League of Australia was founded in 1916 to support serving and ex-serving members of the Australian Defence Force and their families.¹

13.2 Over the years, the League has undergone a number of changes of name. It was originally known as the Returned Sailors & Soldiers Imperial League of Australia. In 1940, its name was changed to the Returned Sailors', Soldiers' and Airmen's Imperial League of Australia and, in 1965, to the Returned Services League of Australia. Finally, in 1990, its name was changed to the Returned & Services League of Australia Limited.²

ORGANISATIONAL STRUCTURE

13.3 The Returned & Services League of Australia Limited is a public company limited by guarantee incorporated under the *Corporations Act 2001* (Cth).³

13.4 The Returned & Services League of Australia (Queensland Branch) ('RSL (Queensland Branch)') is an independent branch of the Returned & Services

1 RSL National, *RSL History* <<http://www.rsl.org.au/About-Us/History>>.

2 RSL National, *About Us* <<http://www.rsl.org.au/About-Us>>.

3 It was registered on 6 May 1971: 'The Returned & Services League of Australia Limited: Company Summary' at ASIC Connect, *Organisation and Business Names Register* <<https://connectonline.asic.gov.au/>>.

League of Australia Limited.⁴ It was constituted as a body corporate by letters patent issued in 1944 under the *Religious Educational and Charitable Institutions Act 1861* (Qld) in the name of the Returned Sailors', Soldiers' and Airmen's Imperial League of Australia (Queensland Branch).⁵

13.5 The State Constitution of RSL (Queensland Branch) provides that the Directors of RSL (Queensland Branch), acting as the Board, may establish, amalgamate and abolish district branches and sub-branches of RSL (Queensland).⁶ It also provides that a sub-branch or district branch may incorporate only with the express written consent of the Board, and must not change its rules or by-laws without the express written consent of RSL (Queensland Branch).⁷

13.6 There are currently 9 district branches and 240 sub-branches in Queensland.⁸ Many of these have been incorporated under the *Associations Incorporation Act 1981* (Qld).⁹ One district branch, the Returned & Services League (Queensland Branch) South Eastern District Limited, has been incorporated under the *Corporations Act 2001* (Cth) as a public company limited by guarantee.¹⁰

OVERVIEW OF THE ACT

13.7 The *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld)¹¹ was enacted to provide for:

- the holding of real and personal property by trustees on behalf of district branches and sub-branches;

⁴ Returned & Services League of Australia (Queensland Branch), *State Constitution* (26 November 2011) cl 1.2, 30.1 (definition of 'League').

⁵ See Queensland, *Parliamentary Debates*, Legislative Assembly, 6 September 1977, 390 (WD Lickiss, Minister for Justice and Attorney-General). It was later established in the name of the Returned & Services League of Australia (Queensland Branch) by letters patent issued on 9 March 1978 under the *Religious Educational and Charitable Institutions Act 1861* (Qld); Returned & Services League of Australia (Queensland Branch), *State Constitution* (26 November 2011) cl 1.1, 30.1 (definition of 'RSL (Queensland Branch)').

⁶ Returned & Services League of Australia (Queensland Branch), *State Constitution* (26 November 2011) cl 14.1–14.2, 30.1 (definition of 'Board'). 'District Branch' means 'a branch established by RSL (Queensland Branch) with such geographical boundaries and responsibilities assigned to it by RSL (Queensland Branch)': cl 30.1 (definition of 'District Branch'). 'Sub-Branch' means 'a branch of RSL (Queensland Branch) established under a charter issued by RSL (Queensland Branch) with such responsibilities assigned to it by RSL (Queensland Branch)': cl 30.1 (definition of 'Sub-Branch').

⁷ Returned & Services League of Australia (Queensland Branch), *State Constitution* (26 November 2011) cl 14.7 ff.

⁸ Information provided by RSL (Queensland Branch), 20 November, 2013.

⁹ See Office of Fair Trading (Qld), *Check a Charity or Association* <<http://www.fairtrading.qld.gov.au/check-a-charity-or-association.htm>>.

¹⁰ It was registered on 7 June 2002: 'Returned & Services League (Queensland Branch) South Eastern District Limited: Company Summary' at ASIC Connect, *Organisation and Business Names Register* <<https://connectonline.asic.gov.au/>>.

¹¹ The original short title of the Act was the *Returned Sailors', Soldiers' and Airmen's Imperial League of Australia, Queensland Branch, Act 1956* (Qld). The short title was changed to the *Returned Services League of Australia (Queensland Branch) Act 1956* (Qld) by the *Religious Educational and Charitable Institutions Act and Other Acts Amendment Act 1977* (Qld) s 7(2) and, later, to its current title by the *Statute Law (Miscellaneous Provisions) Act 1993* (Qld) ss 1–3, sch 1.

- instruments signed by a majority of the trustees to be as effective as if they had been signed by all of the trustees; and
- the vesting of trust property in new trustees without the need for any conveyance or, in relation to land under the operation of the *Land Title Act 1994* (Qld), the need to register the names of the new trustees in the register kept by the registrar of titles.

13.8 In the Second Reading for the Bill, it was observed that the Bill was the result of a request by the then Returned Sailors', Soldiers' and Airmen's Imperial League of Australia (the 'RSSAILA'),¹² and that the Bill would be of 'great convenience to the RSSAILA'.¹³

The RSSAILA which has grown tremendously in recent years holds very valuable property in various parts of Queensland. The method of appointment and change in trustees, will help the Association considerably. ... The Bill will be of great advantage to them. The passing of title to property to new trustees without conveyance will save a lot of expense and legal difficulties especially in country districts.

Vesting of property in district branch or sub-branch trustees

13.9 Section 3(1) of the Act provides that, upon the passing of a resolution by any district branch or sub-branch adopting the Act, all lands and personal property then held by the district branch or sub-branch, and all RSL lands¹⁴ and personal property that may afterwards be acquired by the district branch or sub-branch by gift, purchase, devise, bequest or otherwise, shall become vested in the trustees who are appointed by the district branch or sub-branch in accordance with the rules and by-laws of the district branch or sub-branch. The property is vested in the trustees in 'the official name of the Trustees of the Returned & Services League of Australia (Queensland Branch) ___ district branch (naming the district) or ___ sub-branch (naming the sub-branch)', as the case may be.

13.10 The Act also provides in sections 3A–3C for the vesting of property in circumstances where a district branch or sub-branch becomes incorporated under the *Associations Incorporation Act 1981* (Qld) and where a district branch or sub-branch that is an incorporated association under that Act becomes registered as a company under the *Corporations Act 2001* (Cth).¹⁵

Execution of transfers and other documents by majority is sufficient

13.11 Section 5(1) of the Act provides that any transfer, mortgage, exchange or lease of any RSL lands subject to the Act, if made under the operation of the *Land*

¹² Queensland, *Parliamentary Debates*, Legislative Assembly, 19 September 1956, 522 (W Power, Attorney-General).

¹³ Ibid (GFR Nicklin).

¹⁴ The term 'RSL lands' is defined in s 2 of the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld).

¹⁵ *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) ss 3A–3C were inserted by the *Equity and Fair Trading (Miscellaneous Provisions) Act 2000* (Qld).

Title Act 1994 (Qld), shall be as effectual if signed by a majority of the trustees of that land named in the register of trustees as if such transfer, mortgage, exchange or lease had been duly signed by all the trustees or registered proprietors thereof.

13.12 Section 5(2) makes similar provision in relation to RSL land that is not under the operation of the *Land Title Act 1994* (Qld).

13.13 Section 5(1) effectively creates an exception to the requirements of section 11(1) of the *Land Title Act 1994* (Qld), which would otherwise require an instrument to transfer or create an interest in a lot to be signed by all of the trustees (where the trustees are transferring or creating the interest) or by all of the trustees or a legal practitioner authorised by them (where the trustees are the transferees or the persons in whose favour the interest is to be created).¹⁶

13.14 Section 6 also provides that the signatures of the majority of the trustees for the time being in whom are vested any lands mortgaged to the trustees, or in whose names are invested any moneys in debentures, stock, treasury bills or other securities of the State or of the Commonwealth, or in debentures or other securities of a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* (Qld) or in any financial institution or company, to any release or transfer shall be sufficient to reconvey, release, or transfer respectively, the estate of all the trustees therein in the same manner as if such documents had been signed by the whole of the trustees.

Register of trustees

13.15 Section 7(1) of the Act provides that the authorised representative of RSL (Queensland Branch)¹⁷ must keep a register of trustees of property held subject to the Act on behalf of the district branches and sub-branches. The register must be in a form approved by the chief executive, be kept in duplicate, and be called and inscribed the 'Returned & Services League of Australia (Queensland Branch) Register of Trustees for Queensland'.¹⁸

13.16 If a district branch or sub-branch appoints a new trustee, the authorised representative must update the register by inserting the following information and signing each amendment:¹⁹

- the name and address of the new trustee;
- the reason for the appointment;
- the date of the appointment; and

¹⁶ The *Land Title Practice Manual* notes the requirements of s 5(1) of the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld): Department of Natural Resources and Mines (Qld), *Land Title Practice Manual (Queensland)* (July 2009) [1-2120] <<http://www.dnrm.qld.gov.au/land/titles-valuations/titles-professionals/land-title-practice-manual>>.

¹⁷ See *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) s 2 (definitions of 'authorised representative' and 'State branch').

¹⁸ *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) s 7(2).

¹⁹ *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) s 7(3).

- the date of the amendment of the register.

13.17 The Act also includes a provision to facilitate proof of the matters recorded in the register of trustees.²⁰

Passing of legal estate to new trustees without conveyance

13.18 Section 9 of the Act makes provision for the legal estate of RSL lands held subject to the Act to pass to new trustees without conveyance or transfer.

13.19 Section 9(1) applies in relation to RSL lands that are not under the operation of the *Land Title Act 1994* (Qld). It provides that, on the insertion and authentication in the register of trustees of the name or names of any new trustee or trustees, and without any conveyance or assignment, the estate in such lands of the trustee or trustees in whose place the new trustee or trustees are appointed shall forthwith vest in the new trustee or trustees solely or jointly, as the case may be, with the old continuing trustee or trustees, if any.

13.20 Section 9(2) provides a similar mechanism for the vesting of RSL lands that are under the operation of the *Land Title Act 1994* (Qld). It provides that, on the insertion and authentication in the register of trustees of the name or names of any new trustee or trustees, and without any transfer being made, the new trustee or trustees, together with the former or continuing trustees, if any, shall be deemed to be the proprietor or proprietors of the lands within the meaning of the *Land Title Act 1994* (Qld) as if:

- the name or names of the new trustee or trustees appeared or was or were entered as such proprietor or proprietors in the register book kept under the provisions of the *Land Title Act 1994* (Qld); and
- a certificate of title had been duly issued to the trustee or trustees solely or jointly, as the case may be, with the former proprietor or proprietors, if any, for the estate and interest as the former proprietor or proprietors had in the land, with the former continuing proprietor or proprietors, if any.

13.21 Section 9(3) further provides that, in relation to the lands under the operation of the *Land Title Act 1994* (Qld), the trustees for the time being registered in the register of trustees are deemed to be the proprietors of the land within the meaning of that Act as if the names of the trustees appeared or were entered as the proprietors in such register book, and as if certificates of title had been duly issued to them, but subject to the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld), and to any then subsisting mortgage, lien, encumbrance or lease.

13.22 Section 10 makes provision for the vesting of personal property in new trustees.

²⁰

Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld) s 11.

Powers and duties of registrar of titles

13.23 Section 13 of the Act provides that the registrar of titles has, by virtue of the Act, the power and authority to make, and must cause to be made, any necessary recordings in the register and do and execute all such other acts, matters and things as may be necessary and proper to give full effect to the objects and purposes of the Act.

Transitional provisions in relation to register

13.24 Sections 14 and 15 of the Act were inserted by the *Statute Law (Miscellaneous Provisions) Act 1993* (Qld). They were required because of the change of name from Returned Services League of Australia (Queensland Branch) to Returned & Services League of Australia (Queensland Branch).

13.25 Section 14(2) provides that, if the previous name is recorded in a register including, for example, the land registry, the person whose duty it is to keep the register must change the previous name to the new name on production of instruments that the person considers proper for the purpose of recording the change of name.²¹ Section 14(3)–(4) further provides that no fee may be charged for the change to a register, and that no stamp duty liability is created.

13.26 RSL (Queensland Branch) has advised that its property holdings are updated on a case-by-case basis and only when there is a dealing in relation to a particular property. Of the 31 properties held in Queensland, 11 have been recorded in the name of 'Returned & Services League of Australia (Queensland Branch)'.²²

13.27 Section 15 applies to a register of trustees kept, before the commencement of that section, for the purposes of section 7. It provides that, as soon as possible after the commencement of that section, the register is to be inscribed with the name 'Returned & Services League of Australia (Queensland Branch), Register of Trustees for Queensland'. On compliance with that requirement, the register becomes the register for the purposes of section 7.

13.28 RSL (Queensland Branch) has informed the Commission that the register of trustees has been inscribed with the name 'Returned & Services League of Australia (Queensland Branch)' on the front page.²³ It also expressed a preference for retaining section 15 on the basis that it refers to the manner in which the Register of Trustees is identified for the purposes of section 7.

²¹ *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) s 14(1) defines 'new name' to mean 'the official name mentioned in section 3(1) after the commencement of this section' and 'previous name' to mean 'the official name mentioned in section 3(1) before the commencement of this section'.

²² Information provided by Returned & Services League of Australia (Queensland Branch), 20 November 2013.

²³ *Ibid.*

Other matters

13.29 RSL (Queensland Branch) has advised the Commission that, in two respects, the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) does not reflect the language that is used in the RSL (Queensland Branch) Constitution. In that regard, it has requested that the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) be amended by changing:

- ‘President’ to ‘Chairman’; and
- ‘State congress’ to ‘State AGM’.

13.30 ‘AGM’ is defined in clause 30.1 of the RSL (Queensland Branch) Constitution as ‘the general meeting referred to in clause 6.1’. Clause 6.1 provides:

Convening of AGM

6.1 The Board shall convene an AGM of all District Branches and Sub-Bran­ches within its jurisdiction at least once a calendar year, at such time and place and on such date as the Board may determine.

THE COMMISSION’S VIEW

13.31 The main purpose of the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) is to create a mechanism by which new trustees can be appointed (including in relation to land under the *Land Title Act 1994* (Qld)) without the need for any conveyance or transfer. The Act therefore has an important and ongoing purpose in the operations of the organisation.

Sections 14 and 15

13.32 Because the property of RSL (Queensland Branch) is being recorded in the organisation’s name on a case-by-case basis, section 14 of the Act has a prospective operation and should be retained.

13.33 Section 15, on the other hand, could be repealed, as the register of trustees has been inscribed in accordance with the requirements of section 15 and has, therefore, become the register for the purposes of section 7 of the Act. Further, the repeal of section 15 would not affect the validity of the register.²⁴ However, as noted above, it is the preference of RSL (Queensland Branch) to retain section 15.

13.34 Given that the *Returned & Services League of Australia (Queensland Branch) Act 1956* (Qld) is to be retained, the utility of repealing a single provision is of marginal value when balanced against preserving the accessibility of the legislation for RSL (Queensland Branch). Accordingly, the Commission does not make any recommendation for the repeal of section 15.

²⁴

Acts Interpretation Act 1954 (Qld) s 20(4)(d). In particular, the repeal of s 15 would not end the declaratory effect of that section: s 20A(2)(a).

Other matters

13.35 Although RSL (Queensland Branch) has requested that the references in the Act to ‘President’ be changed to ‘Chairman’, the Commission does not recommend a change to that effect, as it would be inconsistent with current drafting practice, which is for the names of offices to be expressed in a gender-neutral way.²⁵

13.36 However, the Act should be amended to remove the obsolete reference to ‘State Congress’, which is not a term used in the RSL (Queensland Branch) Constitution.

13.37 The term ‘State Congress’ appears once in the Act in the definition of ‘authorised representative’ in section 2. Accordingly, that definition should be amended by omitting the words ‘State Congress’ and inserting ‘State AGM’.

13.38 To clarify the meaning of ‘State AGM’, section 2 of the Act should be further amended to include a new definition of ‘State AGM’ in the following terms, which reflect the meaning of that expression in the RSL (Queensland Branch) Constitution, namely:

State AGM means the general meeting of all district branches and sub-branches convened in accordance with the constitution of the Returned & Services League of Australia (Queensland Branch), as amended from time to time.

RECOMMENDATIONS

13.39 The Commission makes the following recommendations in relation to the *Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)*.²⁶

Rec	Act	Provision	Recommendation
13-1	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 2, definition of ‘authorised representative’	Omit— ‘State congress’. Insert— ‘State AGM’.
13-2	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 2	Insert— ‘ State AGM means the general meeting of all district branches and sub-branches convened in accordance with the

²⁵ See s 25(1) of the *Reprints Act 1992 (Qld)*, which provides:

If the name of an office established by a law uses a word indicating a gender or that could be taken to indicate a gender, the name of the office may be changed, and any reference in a law to the office may be changed or given, in a way that is consistent with current legislative drafting practice.

²⁶ Recommendations 13-3 to 13-5 correct minor drafting errors. The recommendations are self-explanatory and are not discussed elsewhere in this chapter.

Rec	Act	Provision	Recommendation
			constitution of the Returned & Services League of Australia (Queensland Branch), as amended from time to time.'
13-3	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 7(2)(b)	Omit— 'kept'. Insert— 'be kept'.
13-4	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 13	Omit— 'to, and shall cause to be made'. Insert— 'to make, and shall cause to be made,'.
13-5	<i>Returned & Services League of Australia (Queensland Branch) Act 1956 (Qld)</i>	Section 14(3) and (4)	Omit— 'subsection (3)'. Insert— 'subsection (2)'.

Chapter 14

Scout Association of Australia Queensland Branch

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INTRODUCTION

14.1 The terms of reference require the Commission to review the *Scout Association of Australia Queensland Branch Act 1975* (Qld).

14.2 The Commission has consulted with The Scout Association of Australia, Queensland Branch Inc in relation to the Act.

Background

14.3 The Boy Scouts Association (now called The Scout Association) was incorporated in England by royal charter in 1911–1912.¹ The Queensland branch of that Association was formally created in 1926, but it was not separately incorporated. As a result, property acquired by the Queensland branch was registered in the name of The Boy Scouts Association, although the branch dealt with it as if it were its own:²

Legally, this property vests in the parent body in the United Kingdom. The Queensland branch, however, always treated the property as its own and dealt with it freely without reference to the parent body, which has never questioned this and has no knowledge of or interest in the property.

¹ See Privy Council Office, *List of All Charters Granted Since the 13th Century* <<http://privycouncil.independent.gov.uk/royal-charters/chartered-bodies/>>. See also Queensland, *Parliamentary Debates*, Legislative Assembly, 22 April 1975, 897 (WE Knox, Minister for Justice). A copy of the royal charter of incorporation of The Boy Scouts Association is available at L Morland, *Royal Charter of The Boy Scouts Association* (28 March 2005) Scoutdocs <http://scoutdocs.ca/Scouts_Canada_Act/Royal_Charter.php>.

² Queensland, *Parliamentary Debates*, Legislative Assembly, 22 April 1975, 897 (WE Knox, Minister for Justice).

14.4 The Australian Boy Scouts Association was incorporated by royal charter in 1967.³ Its name was changed in 1971 to the Scout Association of Australia.⁴ The various State branches became part of that association, although the State branches continued to hold their property independently.⁵

14.5 The Queensland branch was originally constituted as a body corporate on 15 August 1974 by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld) under the name of 'The Scout Association of Australia Queensland Branch'.⁶

14.6 The *Scout Association of Australia Queensland Branch Act 1975* (Qld) was introduced to ensure that the newly constituted body corporate would be vested with legal title to the property acquired by the branch and so enable the branch to control and deal effectively with its own property.⁷ The Act was assented to and commenced on 15 May 1975.

14.7 Subsequently, on 20 December 1996, the Queensland branch was converted from a body corporate constituted under the *Religious Educational and Charitable Institutions Act 1861* (Qld) into an association incorporated under the *Associations Incorporation Act 1981* (Qld).⁸

14.8 In 1996, at the request of the Queensland branch, amendments were made to the *Scout Association of Australia Queensland Branch Act 1975* (Qld) in anticipation of its incorporation under the *Associations Incorporation Act 1981* (Qld).⁹ The amendments were intended to vest 'the assets, rights and liabilities of the former corporation in the new incorporated association',¹⁰ but did not otherwise substantially alter any of the primary provisions of the Act.

14.9 The Queensland branch is presently registered under the *Associations Incorporation Act 1981* (Qld) under the name of 'The Scout Association of Australia Queensland Branch Inc'.¹¹

³ See *Scout Association Act 1924* (Cth) Preamble.

⁴ Scouts Australia, *Scouting Comes to Australia* (2006–13) <<http://www.scouts.com.au/main.asp?iMenuID=16410237>>.

⁵ Queensland, *Parliamentary Debates*, Legislative Assembly, 22 April 1975, 897 (WE Knox, Minister for Justice).

⁶ See *Scout Association of Australia Queensland Branch Act 1975* (Qld) s 2 (Act as passed).

⁷ See generally Queensland, *Parliamentary Debates*, Legislative Assembly, 23 April 1975, 990 (WE Knox, Minister for Justice).

⁸ Information provided by The Scout Association of Australia, Queensland Branch Inc, 13 November 2013. See also E Fitzgerald, *Structuring and Restructuring Nonprofit Associations*, Working Paper No PONC71 (1997) 12.

⁹ *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996* (Qld) pt 22. See Explanatory Notes, *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Bill 1996* (Qld) 3.

¹⁰ E Fitzgerald, *Structuring and Restructuring Nonprofit Associations*, Working Paper No PONC71 (1997) 12.

¹¹ See Office of Fair Trading (Qld), *Check a Charity or Association* <<http://www.fairtrading.qld.gov.au/check-a-charity-or-association.htm>>.

SCOUT ASSOCIATION OF AUSTRALIA QUEENSLAND BRANCH ACT 1975 (QLD)

14.10 The *Scout Association of Australia Queensland Branch Act 1975* (Qld) is principally concerned with the vesting of property in The Scout Association of Australia Queensland Branch Inc. In particular, the Act deals with the construction of references in wills and other instruments,¹² the continuation of actions and proceedings,¹³ the continuation of contracts and other instruments,¹⁴ the vesting of assets, rights and liabilities¹⁵ and the registration and recording of property in the name of the corporation.¹⁶

14.11 The Act defines the Scout Association of Australia Queensland Branch, incorporated by letters patent dated 15 August 1974 under the *Religious Educational and Charitable Institutions Act 1861* (Qld) as the 'former corporation', and the Scout Association of Australia, Queensland Branch Inc, incorporated under the *Associations Incorporation Act 1981* (Qld) as the 'corporation'.¹⁷

Section 3(3)–(3A): Continuation of actions and proceedings

14.12 Section 3(3) provides that an action or proceeding by or against the Boy Scouts Association Queensland Branch or the Boy Scouts Association that was commenced prior to the passing of the Act, on 15 May 1975, and not completed at that date may be carried on and completed by or against the corporation.

14.13 Section 3(3A) was inserted in the Act in 1996. It provides that a legal proceeding commenced by or against the former corporation and not finished prior to 20 December 1996 (when section 3(3A) commenced) may be continued and finished by or against the corporation.¹⁸

14.14 The Scout Association of Australia, Queensland Branch Inc has informed the Commission that it is not aware of any legal proceedings instituted before the relevant commencement dates for section 3(3) and (3A) that are still active. Nevertheless, it considered that it might be prudent to retain those provisions in order to deal with the 'unlikely' event that such a proceeding is in existence. It also commented that the provisions may still have a role to play in relation to any future proceedings that might be brought in respect of matters arising prior to the relevant commencement dates.

¹² *Scout Association of Australia Queensland Branch Act 1975* (Qld) s 3(1)–(2).

¹³ *Scout Association of Australia Queensland Branch Act 1975* (Qld) s 3(3)–(3A).

¹⁴ *Scout Association of Australia Queensland Branch Act 1975* (Qld) s 3(4).

¹⁵ *Scout Association of Australia Queensland Branch Act 1975* (Qld) s 4.

¹⁶ *Scout Association of Australia Queensland Branch Act 1975* (Qld) ss 5–6.

¹⁷ *Scout Association of Australia Queensland Branch Act 1975* (Qld) s 2.

¹⁸ Section 3(3A) was inserted by the *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996* (Qld) s 181(2), commencing on 20 December 1996.

The Commission's view

14.15 The Commission notes The Scout Association of Australia, Queensland Branch Inc's submission that it is not aware of any legal proceedings started before the relevant commencement dates for section 3(3) and (3A) of the *Scout Association of Australia Queensland Branch Act 1975* (Qld) that have not been completed. In light of this, and the length of time that has elapsed since the commencement of those provisions, the Commission considers that section 3(3) and (3A) should be repealed.

14.16 The repeal of those provisions would not affect their previous operation or their transitional purpose.¹⁹ Nor would it affect any right acquired under those provisions to continue and complete any action or proceeding that had been commenced by or against the former corporation before 20 December 1996 and is still active.²⁰

14.17 Further, the repeal of those provisions, both of which relate to proceedings that have already been commenced, would have no bearing on any future proceedings that might be commenced by or against the corporation in relation to matters arising in the period prior to its incorporation under the *Associations Incorporation Act 1981* (Qld).

Section 4: Vesting provisions

14.18 Section 4 deals with the vesting of assets, rights and liabilities in the corporation. It consists of two subsections.

14.19 Section 4(1) provides that on and from the passing of the Act (on 15 May 1975) the following property vests, without any transfer or conveyance, in the corporation, subject to any mortgage, lien, trust or other interest affecting the property:

- all real and personal property belonging to or vested in the Boy Scouts Association Queensland Branch; and
- all real and personal property situate in Queensland belonging to or vested in the Boy Scouts Association.

14.20 Section 4(2) provides that, on the commencement of that section (which occurred on 20 December 1996), the assets, rights and liabilities of the former corporation vest in the corporation.²¹

14.21 The Scout Association of Australia, Queensland Branch Inc has informed the Commission that money is still held in various bank and other accounts in the name of 'Boy Scout' or 'Boy Scouts'. It also observed the possibility that bequests

¹⁹ *Acts Interpretation Act 1954* (Qld) s 20(2)(b), (4)(d).

²⁰ *Acts Interpretation Act 1954* (Qld) s 20(2)(c), (e), (3).

²¹ Section 4(2) was inserted by the *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996* (Qld) s 182(2), commencing on 20 December 1996.

may be made in the name of 'Boy Scouts' or similar names. In its view, section 4 should therefore be retained.

The Commission's view

14.22 The Commission considers that section 4(1) of the *Scout Association of Australia Queensland Branch Act 1975* (Qld) could be repealed on the basis that the property to which section 4(1) applies, namely, property that was vested in or had belonged to the Boy Scouts Association Queensland Branch or the Boy Scouts Association, was vested automatically on 15 May 1975. Similarly, section 4(2) of the Act could be repealed on the basis that the assets, rights and liabilities to which section 4(2) applies vested automatically on 20 December 1996.

14.23 However, notwithstanding that section 4 has served its original purpose and could, therefore, be repealed, the Commission considers that it would be beneficial to retain this provision for the purpose of ensuring that the legislation provides clarity and certainty as to the circumstances in which property has been vested in the corporation at various points of time.

14.24 The Commission also notes that section 3(1) provides a mechanism for ensuring that, if there is a reference, in a court order, will or other instrument, to property belonging to or vested in the Boy Scouts Association Queensland Branch, the Boy Scouts Association or the former corporation, the property can be dealt with as if it stands in the name of the corporation.

Sections 5–6: Registration and recording

14.25 Section 5 sets out a simple procedure for changing the details in a register or record of property to ensure that property of the Queensland branch is registered in the name of the corporation.

14.26 Section 5(1) provides that, upon production of such instruments or writing as are necessary and compliance with any other requirement the person considers proper, and without requiring the payment of any fee, the person charged with keeping a register or record in which is recorded a registration or notification in respect of property of:²²

- the former corporation;
- the Boy Scouts Association Queensland Branch; or
- the Boy Scouts Association;

shall amend the registration or notification by inserting a reference to the corporation in the place of the former corporation, Branch or Association, as the case may be, and any other notation the person considers proper to explain any amendment so made.

²²

Section 5(1) was amended by the *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996* (Qld) s 183(1), to insert the reference to 'the former corporation'.

14.27 Section 5(2) provides that, if land or an interest in land is vested in the corporation under the Act, within two months after the corporation is incorporated under the *Associations Incorporation Act 1981* (Qld), the corporation must:²³

- give the Registrar of Titles a document mentioned in section 5(1); and
- comply with a requirement of the Registrar of Titles about the amendment mentioned in section 5(1).

14.28 There is a maximum penalty of 10 penalty units stated for non-compliance with that provision.

14.29 Section 6 provides that stamp duty is not payable on any instrument or other writing used pursuant to section 5.

14.30 The Scout Association of Australia, Queensland Branch Inc has informed the Commission that there are no titles recorded in the land titles register in the name 'Boy Scout' or 'Boy Scouts'. In its view, therefore, sections 5 and 6 of the Act could be omitted.

The Commission's view

14.31 The Commission is of the view that sections 5 and 6 of the *Scout Association of Australia Queensland Branch Act 1975* (Qld) should be repealed. This would not affect the previous operation of those provisions.²⁴ Nor would it affect their transitional effect, if it later became necessary to correct a relevant register or record of property.²⁵ Further, the repeal of section 5(2) would not affect any liability of the corporation incurred under that subsection or the enforcement of that liability.²⁶

OTHER MATTERS

Section 3(1)(b)

14.32 Section 3(1)(b) of the *Scout Association of Australia Queensland Branch Act 1975* (Qld) currently refers to a document by the name of the 'Policy Organization and Rules of the Scout Association of Australia'. The Scout Association of Australia, Queensland Branch Inc has informed the Commission that that document is now called the 'Scout Australia Policy and Rules'.

²³ Section 5(2) was inserted by the *Consumer Law and Other Justice Legislation (Miscellaneous Provisions) Act 1996* (Qld) s 183(2).

²⁴ *Acts Interpretation Act 1954* (Qld) s 20(2)(b).

²⁵ *Acts Interpretation Act 1954* (Qld) s 20(4)(d).

²⁶ *Acts Interpretation Act 1954* (Qld) s 20(2)(c)–(e), (3).

The Commission's view

14.33 The reference in section 3(1)(b) of the *Scout Association of Australia Queensland Branch Act 1975* (Qld) to the 'Policy Organization and Rules of the Scout Association of Australia' should be changed to the 'Scout Australia Policy and Rules'.

RECOMMENDATIONS

14.34 The Commission makes the following recommendations in relation to the *Scout Association of Australia (Queensland Branch) Act 1975* (Qld):

Rec	Act	Provision	Recommendation
14-1	<i>Scout Association of Australia (Queensland Branch) Act 1975</i> (Qld)	Section 3(1)(b)	Omit— 'Policy Organization and Rules of the Scout Association of Australia'. Insert— 'Scout Australia Policy and Rules'.
14-2	<i>Scout Association of Australia (Queensland Branch) Act 1975</i> (Qld)	Sections 3(3)–(3A), 5–6	Omit.

Chapter 15

United Grand Lodge of Antient Free and Accepted Masons of Queensland

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INTRODUCTION

15.1 Freemasonry was first established in Queensland in 1859 under the constitution of the United Grand Lodge of England. The formation of numerous other lodges followed, under the English, Scottish and Irish Constitutions.

15.2 An autonomous Grand Lodge of Queensland was first formed in 1904, consisting of 39 lodges. However, the majority of the lodges in existence retained their original allegiance to either Scotland or England, and it was not until 1920 that the lodges of the Scottish and English Districts formed the Queensland Grand Lodge as a precursor to unification. The following year, the Queensland Grand Lodge and the Grand Lodge of Queensland merged to form the current body, the United Grand Lodge of Antient¹ Free and Accepted Masons of Queensland (the 'Grand Lodge').²

15.3 The *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) was prepared at the request of the Grand Lodge.³ It makes provision for the holding of real and personal property by trustees on behalf of the Grand Lodge, and on behalf of lodges that owe allegiance to, and are under the control of, the Grand Lodge.⁴ It also makes provision for the keeping

1 'Antient' is an archaic form of 'ancient'.

2 See D Lauder, 'Freemasons and Freemasonry in Queensland: 1859–1989' (1990) 14(1) *Journal of the Royal Historical Society of Queensland* 33, 34; N Hewton, *150 years of Queensland Freemasonry* (United Grand Lodge of Queensland, 2009) 40–3.

3 Queensland, *Parliamentary Debates*, Legislative Assembly, 13 October 1942, 562 (DA Gledson, Attorney-General).

4 *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 2 (definition of 'lodge').

of a register of trustees, and for the passing of the legal estate in trust property to new trustees without the need for any conveyance or transfer.

OVERVIEW OF THE ACT

Vesting of real and personal property in Grand Lodge and lodge trustees

15.4 Section 3 of the Act provides that all lands and personal property then held by the Grand Lodge or by any person on behalf of the Grand Lodge, and all masonic lands⁵ and personal property that may afterwards be acquired by the Grand Lodge by gift, purchase, devise, bequest or otherwise, shall become vested in the trustees who are appointed by the Grand Lodge in accordance with its constitution and rules. The property vests in the official name of 'the Trustees of the United Grand Lodge of Antient Free and Accepted Masons of Queensland'.⁶

15.5 Section 4 makes similar provision for the vesting of real and personal property then held by, or for, a lodge that has adopted the Act,⁷ or that is later acquired by such a lodge. The property vests in the trustees who are appointed by the lodge in accordance with its by-laws.

Execution of transfers and other documents by majority is sufficient

15.6 Section 6(1) of the Act provides that, where a 'sale, mortgage, exchange, or lease' of any masonic lands subject to the Act is made, the 'transfer, mortgage, exchange, or lease' of the land, if under the operation of the *Land Title Act 1994* (Qld), shall be as effectual if signed by a majority of the trustees of that land named in the register of trustees as if the transfer, mortgage, exchange, or lease had been duly signed by all the trustees or registered proprietors thereof.⁸

15.7 Section 6(2) makes similar provision in relation to the effect of a conveyance, mortgage, exchange or lease of masonic land that is not under the operation of the *Land Title Act 1994* (Qld), and that is signed by a majority of the trustees.

15.8 Section 6(1) effectively creates an exception to the requirements of section 11(1) of the *Land Title Act 1994* (Qld), which would otherwise require an instrument to transfer, or create an interest in, a lot to be signed by all of the trustees (where the trustees are transferring or creating the interest) or by all of the

⁵ The term 'masonic lands' is defined in s 2 of the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld).

⁶ *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 3 is subject to s 3A, which vests certain property in the Board of Benevolence and of Aged Masons, Widows and Orphans' Fund.

⁷ *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 4(2) provides that a certificate that a resolution referred to in s 4(1) has been passed by a lodge on a particular date adopting this Act, signed by persons purporting to be the master and secretary of such lodge, shall be taken as sufficient evidence that the lodge has adopted the Act on the date named in the certificate.

⁸ For consistency with the other references in s 6(1) of the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld), 'sale' should be changed to 'transfer'.

trustees or a legal practitioner authorised by them (where the trustees are the transferees or the persons in whose favour the interest is to be created).⁹

Register of trustees

15.9 Section 8 of the Act requires the authorised representative¹⁰ of the Grand Lodge to keep a register of trustees of the lands and funds held subject to the Act on behalf of the Grand Lodge and the respective lodges in Queensland. The authorised person must enter the names, addresses and occupations of the present trustees of the lands and funds¹¹ and must, on the appointment of a new trustee, record the name of the new trustee, how the vacancy in the trust occurred, the date of the appointment of the new trustee, and the date of the insertion of the new trustee's name in the register.¹² The authorised representative must also sign the register to authenticate the due appointment of each trustee.¹³

15.10 The Act also makes provision, in section 12, for proof of the matters recorded in the register of trustees.

Legal estate to pass to new trustees without conveyance

15.11 Section 10 makes provision for the legal estate in lands held subject to the Act to pass to new trustees, without conveyance or transfer.

15.12 Section 10(1) applies in relation to lands that are not under the operation of the *Land Title Act 1994* (Qld). It provides that, on the insertion and authentication in the register of trustees of the name or names of any new trustee or trustees, and without any conveyance, the estate in such lands of the trustee or trustees in whose place the new trustee or trustees are appointed shall vest in the new trustee or trustees solely or jointly, as the case may be, with the old continuing trustee or trustees, if any.

15.13 Section 10(2) provides a similar mechanism for the vesting of lands that are under the operation of the *Land Title Act 1994* (Qld). It provides that, on the insertion and authentication in the register of trustees of the name or names of any new trustee or trustees, and without any transfer being made, the new trustee or trustees, together with the former or continuing trustees, if any, shall be deemed the proprietor or proprietors of the lands within the meaning of the *Land Title Act 1994* (Qld) as if:

⁹ The *Land Title Practice Manual* notes the requirements of s 6 of the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld): Department of Natural Resources and Mines (Qld), *Land Title Practice Manual (Queensland)* (July 2009) [1-2140] <<http://www.dnrm.qld.gov.au/land/titles-valuations/titles-professionals/land-title-practice-manual>>.

¹⁰ The 'authorised representative' means 'the grand secretary appointed by the grand lodge and for the time being holding office': *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 2 (definition of 'authorised representative').

¹¹ *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 8(1).

¹² *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 8(2).

¹³ *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 8(2).

- the name or names of the new trustee or trustees appeared or was or were entered as such proprietor or proprietors in the register book kept under the provisions of the *Land Title Act 1994* (Qld); and
- a certificate of title had been duly issued to the trustee or trustees solely or jointly, as the case may be, with the former continuing proprietor or proprietors, if any, for the same estate and interest as the former proprietor or proprietors had in the land.

15.14 Section 10(3) further provides that, in relation to the lands under the operation of the *Land Title Act 1994* (Qld), the trustees for the time being registered in the register of trustees are deemed to be the proprietors of the land within the meaning of that Act as if their names appeared or were entered as the proprietors in the register book, and as if certificates of title had been duly issued to them, but subject to the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld), and to any mortgage, lien, encumbrance or lease then subsisting.

15.15 Section 11 makes provision for the vesting of personal property in new trustees without any transfer or assignment.

Powers and duties of registrar of titles

15.16 Section 13 provides that the registrar of titles has, by virtue of the Act, the power to make, and must cause to be made, any necessary recordings, entries or endorsements in the appropriate register and do and execute all such other acts, matters and things as may be necessary and proper to give full effect to the objects and purposes of the Act.

Provisions relating to the Board of Benevolence and of Aged Masons, Widows and Orphans' Fund

15.17 In 1944, a special committee was formed by the Grand Lodge to examine the amalgamation of all forms of masonic benevolence. This resulted in the establishment, in 1946, of the Aged Masons, Widows and Orphans' Fund to administer all types of masonic benevolence, including masonic homes and schools.¹⁴

15.18 On 2 March 1978, the Fund was constituted as a body corporate by letters patent issued under the *Religious Educational and Charitable Institutions Act 1861* (Qld), and titled the Board of Benevolence and of Aged Masons, Widows and Orphans' Fund (the 'Board'). The Board is the official charity of the Grand Lodge.¹⁵

15.19 In 1976, in anticipation of the incorporation of the Board, the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) was amended to make provision, on the incorporation of the Board, for the

¹⁴ Board of Benevolence and of Aged Masons, Widows and Orphans' Fund, *Golden Jubilee Year of the Aged Masons, Widows and Orphans' Fund 1946–1995* (1995) 5.

¹⁵ Ibid.

vesting in the Board of certain property then held by the trustees of the Grand Lodge.¹⁶

15.20 As explained in the second reading speech to the Bill:¹⁷

This property is presently administered by the Board of Benevolence but is held on behalf of the United Grand Lodge of Antient Free and Accepted Masons of Queensland by the trustees of the lodge.

It is proposed to incorporate the Board of Benevolence in accordance with the provisions of the *Religious, Educational and Charitable Institution Acts*. When this is done, the Bill will provide for the divesting from the trustees of property applied for charitable and benevolent purposes and its vesting in the board.

Vesting of property in the Board

15.21 Section 3A(1)(a) of the Act provides that, upon the incorporation of the Board, property that was, at the time of its incorporation, held by the trustees of the Grand Lodge for a charitable purpose or benevolent purpose and administered by the Board, shall be divested from the trustees and vest in the Board.¹⁸

Liabilities and obligations of the Board

15.22 Section 3B of the Act provides that, on the vesting in the Board, under section 3A, of property that is affected by a mortgage, charge, encumbrance, lien, lease, agreement or other transaction, the Board shall, by virtue of the vesting, assume all liabilities and obligations had by the trustees or by any person on behalf of the Grand Lodge relating to that property.

15.23 Section 3C further provides that, for the purpose of enforcing by or against the Board a chose in action vested in it under section 3A, or any liability or obligation assumed by it under section 3B, it shall be deemed, where necessary to do so, that the Board is a party to the instrument of mortgage, charge, encumbrance, lien, lease or agreement or other document or transaction that confers the right or imposes the liability or obligation that is to be enforced in place of the trustees or other person from whom the chose in action is divested under section 3A or the liability or obligation is assumed under section 3B.

15.24 Sections 3B and 3C are not limited in their application to property that has vested under section 3A(1)(a), but would also apply to property that vests under section 3A(1)(b).

¹⁶ *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 3A(1).

¹⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 21 September 1976, 613 (WD Lickiss, Minister for Justice and Attorney-General).

¹⁸ Cf *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) s 3A(1)(b), which has prospective operation, and provides that all property acquired by or for the Grand Lodge by gift, purchase, devise, bequest or otherwise at any time or times after the incorporation of the Board for a charitable or benevolent purpose administered by the Board, shall vest in the Board.

Unauthorised investments by Board subject to approval of Grand Lodge

15.25 Section 3D of the Act provides that the Board must not invest moneys held by it in any investment that is not an authorised investment within the meaning of the *Trusts Act 1973* (Qld), unless it has first obtained the approval of the Grand Lodge.

15.26 When section 3D was inserted in 1976,¹⁹ the *Trusts Act 1973* (Qld) contained a list of authorised investments, such as government stocks, debentures or securities guaranteed by the government or local authorities, first legal mortgages of land, and particular bank deposits.²⁰ A trustee was limited to the authorised investments specified in the statutory list, unless the trust instrument provided otherwise or the court approved another investment. However, in 1999,²¹ Part 3 of the Act was amended to omit the statutory list of authorised investments and to confer a broad power of investment under which trustees, unless expressly forbidden by the trust instrument, may invest trust funds in any form of investment, subject to their duty to act with care, diligence and skill.²²

15.27 The term ‘authorised investments’ is now defined in section 5(1) of the *Trusts Act 1973* (Qld) in the following terms:

authorised investments means investments of trust funds that are—

- (a) authorised by the instrument creating the trust; or
- (b) made by the trustee exercising a power of investment under part 3 or under an order under section 94; or
- (c) authorised by another Act or the general law. (emphasis added)

The Commission’s view

15.28 Because of the different approach now taken in Part 3 of the *Trusts Act 1973* (Qld) in relation to a trustee’s power of investment, a provision restricting the Board to ‘authorised investments’, except where it has the approval of the Grand Lodge, does not have the same meaning that it did when section 3D of the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942* (Qld) was enacted.

15.29 In order to modernise the Act and ensure that section 3D continues to be a meaningful provision, the Commission considers that section 3D should be omitted and replaced with a provision to the effect that the Board may invest moneys held by it in any investment that would be an authorised investment under Part 3 of the *Trusts Act 1973* (Qld).

¹⁹ *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act Amendment Act 1976* (Qld) s 5.

²⁰ *Trusts Act 1973* (Qld) s 21(1) (Reprint No 2C, 28 October 1999).

²¹ *Trusts (Investments) Amendment Act 1999* (Qld).

²² *Trusts Act 1973* (Qld) ss 21–22. See also s 24.

RECOMMENDATIONS

15.30 The Commission makes the following recommendations in relation to the *United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)*:²³

Rec	Act	Provision	Recommendation
15-1	<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>	Section 3D	Omit. Insert— '3D Board may invest in authorised investments The Board may invest moneys held by it in any investment that would be an authorised investment under Part 3 of the <i>Trusts Act 1973 (Qld)</i> .'
15-2	<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>	Section 6(1)	Omit— ²⁴ 'sale'. Insert— 'transfer'.
15-3	<i>United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942 (Qld)</i>	Section 13	Omit— 'to, and shall cause to be made'. Insert— 'to make, and shall cause to be made,'.

²³ Recommendations 15-2 and 15-3 correct minor drafting errors. Recommendation 15-3 is self-explanatory and is not discussed elsewhere in this chapter.

²⁴ See n 8 above.

Appendix A

Terms of Reference

Review of Religious and Certain Other Community Organisation Acts

1. I, JARROD BLEIJIE, Attorney-General and Minister for Justice, having regard to the desirability of:
 - repealing obsolete and unnecessary enactments;
 - reducing the number of separate enactments; and
 - generally simplifying and modernising the law, including removal of superfluous provisions where laws of general application may apply;

refer to the Queensland Law Reform Commission, for review pursuant to section 10 of the *Law Reform Commission Act 1968*, the Acts mentioned in the schedule to these terms of reference relating to the establishment and management of various church and community organisations in Queensland.
2. The Commission is requested to recommend whether:
 - (a) any of the Acts are obsolete and can be repealed;
 - (b) any of the Acts still required can be consolidated to reduce the number of separate Acts;
 - (c) the drafting of any of the Acts still required can be simplified and modernised; and
 - (d) particular provisions of the Acts can be repealed or can refer to laws of general application, such as the *Associations Incorporation Act 1981* and the *Trusts Act 1973*.
3. In performing its functions under this reference, the Commission is to undertake consultation with the relevant churches and other entities and with any relevant government departments or agencies.
4. The Commission is to report to the Attorney-General and Minister for Justice by **31 December 2013**.

Schedule
to the Terms of Reference
Review of Religious and Certain other Community Organisation Acts

All Saints Church Lands Act 1924
All Saints Church Lands Act 1960
Anglican Church of Australia (Diocese of Brisbane) Property Act 1889
Anglican Church of Australia Act 1895
Anglican Church of Australia Act 1895 Amendment Act 1901
Anglican Church of Australia Constitution Act 1961
Anglican Church of Australia Act 1977
Ann Street Presbyterian Church Act 1889
Bishopsbourne Estate and See Endowment Trusts Act 1898
Boonah Show Ground Act 1914
Chinese Temple Society Act 1964
Churches of Christ, Scientist, Incorporation Act 1964
Guides Queensland Act 1970
Presbyterian Church of Australia Act 1900
Presbyterian Church of Australia Act 1971
Queensland Congregational Union Act 1967
Queensland Temperance League Lands Act 1985
Returned & Services League of Australia (Queensland Branch) Act 1956
Roman Catholic Relief Act 1830
Roman Catholic Church (Northern Lands) Vesting Act 1941
Roman Catholic Church (Corporation of the Sisters of Mercy of the Diocese of Cairns) Lands Vesting Act 1945
Roman Catholic Church Lands Act 1985
Roman Catholic Church (Incorporation of Church Entities) Act 1994
Salvation Army (Queensland) Property Trust Act 1930
Scout Association of Australia Queensland Branch Act 1975
Uniting Church in Australia Act 1977
United Grand Lodge of Antient Free and Accepted Masons of Queensland Trustees Act 1942
Wesleyan Methodists, Independents, and Baptists Churches Act 1838
Wesleyan Methodist Trust Property Act 1853

Appendix B

List of Respondents

Religious organisations

Trustees of the All Saints Church, Wickham Terrace
Anglican Church of Australia, Diocese of Brisbane
Anglican Diocese of North Queensland
Trustees of the Ann Street Presbyterian Church Trust
Catholic Archdiocese of Brisbane
Catholic Diocese of Cairns
First Church of Christ, Scientist, Brisbane
Institute of Sisters of Mercy of Australia & Papua New Guinea
The Presbyterian Church of Queensland
Queensland Baptists
Executive of the Queensland Congregational Fellowship
The Salvation Army (Australia Eastern Territory)
The Uniting Church in Australia Queensland Synod

Community organisations

Boonah Show Society Inc
Girl Guides Queensland
Healthy Options Australia on behalf of Drug Awareness and Relief Foundation (Australia) (formerly the Queensland Temperance League)
Returned & Services League of Australia (Queensland Branch)
The Scout Association of Australia, Queensland Branch Inc