

Presbyterian Church of Victoria

HAND BOOK

RELATING TO THE

Presbyterian Trusts Act 1890

No. 1175 (6th October, 1890)

As amended by the

Presbyterian Trusts (Common Fund) Act 1965

No. 7310 (23rd November, 1965)

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INDEX

	PAGE
PART I.-EXPLANATIONS AND DIRECTJONS:	2
A. Main Objects of the Act	
B. The Corporation	
C. Congregational Trustees	
D. Properties	
E. Trusts of Properties	
F. Presbyteries	
G. Moderator	
PART II.-THE PRESBYTERIAN TRUSTS ACT 1890 as amended.	6
PART III.-THE CORPORATION:	
Corporation Formed-Gazette Notice	22
PART IV.-RULES MADE UNDER THE ACT:	23
A. Relating to the Corporation ...	
B. Relating to the consent of Moderator	
C. Relating to the Trustees of Congregational Property	
PART V.-RESOLUTION re COLLEGES:	
Vesting Properties in Corporation	27

Part I

EXPLANATIONS AND DIRECTIONS

RELATING TO THE

PRESBYTERIAN TRUSTS ACT 1890.

A.-Main Objects of the Act.

The main objects of the "Presbyterian Trusts Act 1890" were threefold.

- I. To establish a permanent corporate body -to hold all property belonging to the Church generally and also all congregational property which congregations might desire to vest in the Corporation.
- II. To establish a Register of Trustees of Congregations where the property is not vested in the Corporation, so as to simplify matters when trustees are changed, and also to bring the trusts of such properties into some uniformity.
- III. To facilitate and render less expensive the conveyance and transfer of Church Property.

B.-The Corporation.

1. By virtue of section 6 of the Act all properties belonging to the Church, except those of existing settled congregations are vested in and are now held by the Corporation.
2. Power is given to the majority of the members and adherents of any congregation, with the consent of the General Assembly and of a majority of the trustees, to vest its property in the Corporation. (See sections 7, 8 and 10).
3. Further, in all cases where there are no trustees, and where there is no one authorised to elect new trustees, or if the persons authorised do not elect within one month after being called on to do so by the Moderator of the General Assembly, under section 9, the property will vest in the Corporation.

C.-Congregational Trustees.

1. In all cases where the property is not vested in the Corporation trustees are to be elected and removed in accordance with the Rules of the Assembly. (See pages 12-15).
2. These are so full that no explanation is necessary.
3. Trustees are nominated by the congregation, and appointed by the Presbytery.*
4. The attention of Clerks of Session and Ministers is, however, specially drawn to Rule 19. (See page 15). Great trouble has been occasioned in the past by deaths and resignations of trustees not being properly notified, and it will be quite impossible to keep the Register of Trustees correct unless full and immediate intimation is given of all changes of trustees. The Register of Trustees is established for the benefit of congregations, so as to save the expense and trouble of getting conveyances of their properties on every change of trustees. It is therefore absolutely necessary that all should co-operate in making it a correct record.
5. The Moderator is responsible for the Register, but without accurate information being given to him he cannot keep it in proper order.

* Forms relating to the Nomination and Appointment of Trustees may be obtained from the Office of the General Assembly.

D.-Property.

The Act is applicable to all Church property; and section (2) defines property to mean property both Real and Personal.

1. Real Property includes:

- (a) All land granted, promised, or reserved by the Crown for any of the purposes of the Presbyterian Church of Victoria, or any of the bodies mentioned in the Union Act, No. 82, as amended by Act No. 321.
- (b) All land acquired by purchase or gift.
- (c) All land belonging to the Presbyterian Church of Victoria, or to any of its congregations or mission stations, or mission districts or otherwise.

2. Personal Property includes:

Money held in Trust

- (a) For the Church generally.
 - (b) For any congregation.
 - (c) For any special purpose in connection with the Church.
 - (d) For the benefit or use of the members thereof as such.
 - (e) For any person or persons holding for the time being office therein.
3. No land whatever under any circumstance can be transferred, conveyed, mortgaged, exchanged or leased without the special permission of the General Assembly (see section 20).

E.-Trusts of Properties.

1. Many properties of the Church were held without any declaration of the exact trusts on which they were held. The Act (section 18) therefore provides that all such properties shall be held on the trusts of the Model Trust Deeds, or one of them. It follows, therefore, that all the properties of the Church are now subject to the Model Trust Deeds, or one of them, except in cases where there are express trusts.
2. Some of these express trusts are, however, very imperfectly expressed, or, owing to change of circumstances, have become unsuitable. Section 19 provides a mode of bringing these properties also under the trusts of the Model Trust Deeds or one of them.
3. It is provided in section 20:-(1) That no dealing with Church property, either by way of transfer, conveyance, mortgage, exchange or lease, shall have any effect without the written consent of the Moderator. (2) That a deed signed by a majority of the trustees shall be as effectual as if all had signed, and that an attorney, under power of a trustee, may sign for him; and rule II (page 12) enacts that the consent of the Moderator to any transfer, conveyance, mortgage, exchange, or lease, shall not be given unless a law agent of the Church first approve thereof.

F.-Presbyteries.

1. It is the duty of Presbyteries to appoint new trustees of Congregational properties.
2. Also before and after appointment to see that the trustees sign the required declarations.
3. To forward the declaration signed after appointment to the General Office of the Church, Assembly Hall.
4. If a congregation call upon a trustee to resign, the call must be approved and confirmed by the Presbytery before it is effectual.
5. Clerks of Presbytery are specially to note that notice of the appointment of every new trustee, and of the removal of any trustee must be sent to the Moderator of the General Assembly within a week after such appointment or removal.
6. This is essential to the accuracy of the Register of Trustees.
7. The attention of Presbyteries is also drawn to the resolutions of Assembly requiring them to keep Registers of Properties (See page 18).

G.-Moderator.

It is the duty of the Moderator to see that the Register of Trustees is accurately kept, and to sign all entries therein, also to give certificates when required showing who are the trustees of any property (see sections 21 and 22 of the Act); also to give his consent in writing to dealings with church properties, provided

- (a) The dealing is in accordance with the trusts on which the property is held.
- (b) The dealing has the assent of the General Assembly.
- (c) A law agent has approved of the deed or other document.

Part II

PRESBYTERIAN TRUSTS ACT 1890. *

(54 Victoria, No. 1175)

An Act to provide for the creation of a Corporate Body of Trustees in church Property belonging to "The Presbyterian Church of Victoria" may be vested and for other purposes.

(6th October, 1890.)

Preamble

Whereas by an Act passed in the twenty-second year of Her present Majesty numbered LXXXII. as amended by Act No. CCCXXI., it was enacted that all here-ditaments estates and temporal privileges and all equitable rights belonging to certain Presbyterian bodies and the congregations thereof should belong to "The Presbyterian Church of Victoria" and the several congregations thereof subject to the decisions and judicatories of the said church only: And whereas the General Assembly of the said church has adopted Model Trust Deeds (hereinafter called "The Model Trust Deeds of the Presbyterian Church of Victoria") to the intent that certain property belonging to the said church may be held upon the trusts thereof: And whereas the said Model Deeds were deposited with the Registrar-General on the eleventh day of March One thousand eight hundred and seventy-nine and are numbered respectively four thousand three hundred and seventy-nine and four thousand three hundred and eighty: And whereas the members of the said church are desirous that a corporate body of trustees should be created for the purpose of holding the property of the said church, and that .for the better management thereof certain property of the said church should be vested in such corporate body and that the trusts upon which the property of the said church is held should be assimilated so far as possible to the trusts contained in the said Model Deeds, and that the conveyance and transfer of such property should be facilitated and rendered less expensive: Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. This Act shall be called and may for all purposes cited as the Presbyterian Trusts Act 1890.
2. In this Act, unless inconsistent with the subject-matter or context, the following words shall have the meanings hereinafter respectively assigned to them:

"Church" shall be taken to designate and apply to the Church now known as the Presbyterian Church of Victoria:

"Common Fund" means the Common Fund authorized to be established and kept in the books of the Trusts Corporation pursuant to sub-section (1) of section fourteen A.

"Common Fund."
Inserted by No. 7310. s.2.

"General Assembly" shall mean the General Assembly of the Presbyterian Church of Victoria, convened in accordance with the rules practice and usages of the said church:

"General Assembly."

"General Assembly's Trustees" shall mean the persons who previously to the creation of the corporate body of trustees hereinafter mentioned have been appointed by the General Assembly as trustees for the property of the church:

"General Assembly's Trustees"

"Moderator" shall mean the Moderator for the time being of the General Assembly of the Presbyterian Church of Victoria:

"Moderator."

"Property" shall mean land promised or reserved by the Crown for any of the purposes of the Presbyterian Church of Victoria or of any of the bodies mentioned in the said Act No. LXXXII., as amended by the Act No. CCCXXI., and all property real and personal including money or securities for money held by or vested or purporting to be vested in or claimable by any person or persons either in trust generally for the said church or for any congregation thereof or for any special purpose in connexion therewith or for the benefit or use of the members thereof as such or of any person or persons holding for the time being office therein.

"Property"

"Trusts Corporation" means the corporate body of trustees constituted under this Act under the name of the Presbyterian Church of Victoria Trusts Corporation.

"Trusts Corporation"
Inserted by No. 7310, s.2.

General Assembly may pass a resolution to form a corporate body of trustees.

3. The General Assembly may if it thinks fit pass a resolution expressing its desire-

- (a) that a corporate body of trustees be constituted for the purpose of holding property in trust for the church;
- (b) that the persons nominated in the resolution of trustees be the corporate body of trustees;
- (c) that such trustees be incorporated under the name specified in the resolution.

Nothing in this section shall affect any separate trust, but such trust shall continue in force after the trust estate shall have been transferred to or vested in the corporate body of trustees under the provisions hereinafter contained.

Certified copy of resolution to be delivered to Registrar General.

4. As soon as may be after the passing of such resolution the Moderator shall cause a copy thereof duly certified under his hand to be delivered to the Registrar-General, who shall retain and register the same.

Corporate Trustees to be constituted and may take and hold property.

5. Within one month of the registration of such resolution the Registrar-General shall give notice thereof by advertising the same at length in the Government Gazette, and thereupon the trustees named in such notice and their successors to be appointed as hereinafter provided shall be a body corporate by the name stated in such notice, and shall have perpetual succession and a common seal, and may sue and be sued, and may acquire take and hold any property in trust for the church, and may receive any moneys which have been or shall be given or contributed by any person or persons to be applied to any of the purposes of the church, and may take over any securities for money held by any person or persons on behalf thereof, and may take in the name of such corporate body any securities for money belonging to the church which shall be lent or advanced on account thereof, and shall deal with all such property and securities so as to give effect to the trusts to which they shall be specially subject or when not subject to any express trust in such manner as this Act hereinafter provides of the General Assembly may from time to time direct, but so as not to interfere with the jurisdiction of the Supreme Court in the enforcement of trusts.

6. Immediately upon the incorporation of the corporate body of trustees, all property held by any person or persons for or on behalf of the church generally other than property which at the passing of this Act is held on behalf of or occupied or used by or for the purposes of any existing congregation of the church or of the minister thereof and all property held and all securities taken for money advanced by the General Assembly's trustees for and on behalf of the church, and all property situated in any place in which no congregation being or forming part of a settled charge recognised as such by the General Assembly exists at the time of such incorporation, shall without any further conveyance or transfer vest in the corporate body of trustees, and the Registrar-General or the Registrar of Titles (as the case may be) shall make the proper transfer thereof in his register. Provided that if any such property is subject to any mortgage charge or encumbrance it shall not vest in the corporate body of trustees until the mortgage charge or encumbrance has been discharged or the corporate body of trustees by memorandum in writing undertakes to answer any liability in respect of such mortgage charge or encumbrance. Provided also that the properties known as Ormond College the Scotch College and the Presbyterian Ladies' College shall not vest in the corporate body of trustees until the General Assembly by a special vote in that behalf shall so direct.

Certain property to vest in corporate trustees immediately

7. From and after the registration of such resolution where any persons hold any property in trust for or on behalf of the church, and in case such property is held on behalf of or occupied or used by or for the purposes of any congregation of the church with the consent of the majority of the members and adherents of such congregation present in person or by proxy at a meeting duly convened for that purpose, and with the approval of the General Assembly the trustees or a majority of them may if they think fit consent to a transfer of the property to the corporate body of trustees upon the trusts to which the same is subject, and such transfer when completed and accepted by the corporate body shall from and after the date thereof operate as a discharge of all the trustees from the duties of the trust.

Other church properties may be transferred to corporate trustees.

8. In the circumstances mentioned in the last preceding section, if by reason of death absence from Victoria for six months in succession or any other disability the consent of any trustee to the transfer as aforesaid cannot be obtained. the Moderator may by writing under his hand consent to such transfer in place of any such trustee; and if such consent be published in the Government Gazette and in some newspaper circulating in the place where the property to which the consent refers is situate, and if within a month from the last publication of such advertisements no proceedings be taken therein by the person in whose name such consent is given, such consent shall upon the expiration of such month be as effective for the purpose of this Act as a consent given by the person in whose place the consent is declared to have been given.

Moderator may consent to transfer for certain trustees.

Properties for which there are no trustees to vest in corporate trustees.

9. If in any case the person or all the persons in whom any property is vested die or be absent from Victoria for six months in succession or cannot be found or resign or be removed from office or become otherwise incapable of holding such property, of which incapacity the General Assembly shall be the sole and final judge, and if those who are lawfully authorised to elect or appoint a successor or successors to such person or persons refuse or neglect to do so for the space of one month after being called upon by the Moderator to make such election or appointment, or if there be no person lawfully authorised to elect or appoint such successor or successors, then forthwith the Moderator may by certificate in writing under his hand in the form and to the effect in Part I, of the First Schedule to this Act declare that there are no trustees of such property and thereupon such property shall vest in the corporate body of trustees, and the certificate shall have the same effect as if the trustee or trustees who had died or left Victoria or could not be found or had resigned or had been removed from office or become otherwise incapable of holding such property had duly executed a conveyance or transfer of the property in the same manner and for the same estate.

First Schedule.

Registrar-General or Registrar Titles to carry out transfers to corporate trustees.

10. Upon obtaining the written consent of the majority of the trustees of any property held by them on behalf of the church (either under their own hands or that of the Moderator as hereinbefore mentioned) to the transfer to the corporate body of trustees of such property, or upon receiving the certificate of the Moderator that there are no trustees of any property as in the last preceding section mentioned and upon receiving the acceptance by the corporate body of trustees of the transfer to it of such property, the Registrar-General or the Registrar of Titles (as the case may be) shall make the proper transfer thereof in his register, and thereupon without further conveyance or transfer the whole estate and interests of the trustees of such property shall vest in such corporate body.

Gifts to church before incorporation to have same effect afterwards.

11. After the incorporation of the corporate body of trustees every donation gift and disposition of property real or personal theretofore lawfully made (but not having actually taken effect) or thereafter lawfully made by deed will or otherwise to or in favour of such church generally or the General Assembly's trustees or any person for or on behalf of the church generally shall take effect as if the same had been made to or in favour of the corporate body of trustees.

Appointment of corporate trustees.

12. The corporate body of trustees appointed for the purpose of this Act and their successors shall be appointed in such manner and shall hold their office for such term and upon such conditions, and vacancies in such offices shall be filled in such manner, as the General Assembly shall by any rule or regulation from time to time prescribe.

13. When any person who has been appointed a trustee by virtue of his office whether clerical or lay ceases to hold such office his successor thereto shall, upon the certificate in writing of the Moderator of the vacating of the office by the last holder thereof and of the appointment of the person named therein as his successor and of his acceptance of the office, become a trustee under his official designation in the stead of the person last registered under such designation.

Successor in office to become trustee in place of predecessor.

14. All property becoming vested in the corporate body of trustees as hereinbefore mentioned or which shall in any manner be acquired by such corporate body shall, so far as the same is subjected to any express trust, be held managed and dealt with by such corporate body in conformity with such expressed trust and shall so far as the same is not subject to any express trust be held managed and dealt with in such manner as the General Assembly may from time to time direct, and such property shall be subject as to the management thereof to the rules or regulations of the General Assembly in force for the time being which are applicable thereto. All property which at the passing of this Act is managed and administered under the Act 8 William IV, cap. 7 shall for the purposes of this section be deemed to be held upon an express trust.

Management of property vested in corporate body of trustees.

14A. (1) The Trusts Corporation may in its discretion invest any moneys in its hands whether or not they are subject to any express trust either

Power to Trust Corporation to Invest moneys separately of in Common Fund.

- (a) on the separate account of any trust; or
- (b) (if the moneys are not directed to be invested in some other specified manner and investment in a Common Fund is not specifically prohibited by the terms of the trust governing the said moneys) as part of a Common Fund" established and kept in the books of the Trusts Corporation.

Inserted by No. 7310, s.3.

(2) The Trusts Corporation shall have power to invest moneys (whether forming part of the Common Fund or not)

- (a) in any manner in which trust moneys may be invested by a trustee under the Trustee Act 1958 or any other Act;
- (b) on deposit with any bank or State savings bank carrying on business in the Commonwealth of Australia;

(c) in the purchase or acquisition or improvement of freehold or leasehold land within the Commonwealth of Australia; or

(d) subject to such terms provisions and conditions as are prescribed by or under any general or special order of the Supreme Court or a Judge thereof, in any manner authorized by any such order.

Investments in Common Fund.

(3). Investments made from moneys forming part of the Common Fund shall not be made on account of or belong to any particular trust, but the Trusts Corporation shall cause to be kept in the books of the Trusts Corporation an account showing at all times the current amount at credit in the Common Fund on account of each trust.

Investment of money in Common Fund on advances.

(4) (a) The Trusts Corporation may in its discretion make advances from the Common Fund for any purpose of or relating to the Church.

(b) Any sum so advanced shall be deemed an investment of moneys forming part of the Common Fund and shall bear interest at a rate fixed by the Trusts Corporation and the sum advanced and the interest thereon shall be deemed to be a charge on the assets of the Church.

Sale of Investments in Common fund.

(5) The Trusts Corporation may sell investments belonging to the Common Fund and may withdraw any of the moneys belonging to the Common Fund for any purpose of or relating to the exercise and discharge of its powers authorities duties and functions under this or any other Act or under any trust.

Withdrawal of amounts from Common Fund.

(6) The Trusts Corporation may in its discretion at any time withdraw from the Common Fund any amount at credit in the Common Fund on the account of any trust and may invest such amount on the separate account of that trust.

(7) Amounts so withdrawn from the Common Fund shall as from the date of such withdrawal cease to have any claim for interest or otherwise from the Common Fund.

Amounts at credit in Common Fund not affected by capital appreciation or depreciation of Investments.

(8) No capital appreciation or depreciation in the value of any investments made from the Common Fund shall be deemed or taken to increase or diminish the amount at credit in the Common Fund on the account of any particular trust, and on the withdrawal from the Common Fund of any amount invested therein the trust in question shall be entitled to be credited with the actual amount which was so invested without regard to any such appreciation or depreciation.

14B. (1) Income received from the investment of the moneys forming part of the Common Fund shall be part of that Fund and shall be credited to an account to be called the "Income Suspense Account" and shall be allocated therefrom as hereinafter provided.

Allocation of income received on Investments made from Common Fund.

Inserted by No.7310. s.3.

(2) On each amount at credit in the Common Fund interest at the appropriate rate fixed from time to time by the Trusts Corporation shall at all such times and intervals as the Trusts Corporation determines be allocated and transferred from the Income Suspense Account to the credit of each other trust or account entitled for the time being to the interest on the said amount; and the Trusts Corporation may fix different rates of interest according to the source and nature of the different amounts invested in the Common Fund, the periods for which they are so invested and such other factors as the Trusts Corporation considers relevant.

Power to fix differential rates of interest on amounts in Common Fund.

(3) No trust or account shall be entitled in respect of any amount at credit in the Common Fund to any further or other interest than the interest allocated and paid as provided in the last preceding sub-section.

(4) At such time or times in each year as the Trusts Corporation determines such amount of the moneys at credit in the Income Suspense Account as the Trusts Corporation deems necessary shall, after providing for all interest to be carried to the credit of each trust and account as aforesaid, be carried to the credit of an account to be called the "Common Fund Reserve Account".

Reserve Account and application thereof

(5) All capital profit made upon the realization of investments from the Common Fund shall also be carried to the credit of the Common Fund Reserve Account and all capital losses incurred upon such realization carried to the debit of that account.

(6) Moneys standing to the credit of the Common Fund Reserve Account may be withdrawn and applied for all or any of the following purposes:

- (a) Payment of any costs and expenses incurred in protecting investments made from the Common Fund;
- (b) Payment of such other costs expenses and charges incurred in respect of the Common Fund or investments made therefrom as in the opinion of the Trusts Corporation are properly chargeable against the Common Fund Reserve Account;

(c) Payment of any legal costs expenses and charges not ordered by the court to be charged against a particular trust and not otherwise properly chargeable against a particular trust;

(d) Payment of any legal costs expenses and charges not ordered by the court to be charged against a particular trust but otherwise properly chargeable against a particular trust where the funds in the particular trust are insufficient to meet such costs expenses and charges; and

(e) Payment of any costs expenses and charges incurred by the Trusts Corporation in obtaining legal advice or in legal proceedings to which the Trusts Corporation is or is made a party where such costs expenses and charges are such that, by reason of the general importance of the subject-matter of the advice or proceedings, they should not, in the opinion of the Trusts Corporation, be charged against a particular trust.

Inserted by No 7310 s. 3

14C. The Trusts Corporation shall be responsible for investing and keeping invested the Common Fund.

Corporate body of trustees may convey to congregational trustees for purpose of mortgaging

15. When any property is held in trust for or on behalf of any congregation of the church by the corporate body of trustees, and in case it is desired to mortgage charge or otherwise encumber such property, the corporate body of trustees shall on a resolution being passed by the General Assembly to that effect convey and transfer such property to such trustees in this section called the congregational trustees as shall be nominated by the congregation and appointed by the presbytery to which such congregation belongs in accordance with the rules and regulations of the church, the congregational trustees shall upon such conveyance or transfer hold such property for the purpose of effecting or executing a mortgage charge or other encumbrance thereon and not otherwise, and may effect and execute such mortgage charge or other encumbrance accordingly, but upon the payment or other discharge of the moneys secured thereon the property shall without any further conveyance or transfer re-vest in the corporate body of trustees, and shall be held for all purposes as if such property had not been conveyed or transferred to the congregational trustees.

Trustees appointed hereunder to be trustees of property hereafter brought under the Act No 391.

16. When after the passing of this Act any land which has been granted promised or reserved by the, Crown for any of the purposes of the church shall be brought under the provisions of the Act No. CCCXCI. the corporate body of trustees appointed under the provisions of this Act may be the trustees of such land.

17. The Registrar-General shall enrol in the office of the said Registrar-General "The Model Trust Deeds of the Presbyterian Church of Victoria" (hereinbefore referred to) when such deeds are presented or tendered to him for that purpose by or on behalf of the Moderator.

Enrolment of Model Trust Deeds.

18. Subject and without prejudice to any mortgage charge encumbrance lien or lease affecting the same, all property except the properties known as Ormond College the Scotch College and the Presbyterian Ladies' College which is now held or which may hereafter be acquired by any person or persons for the use or benefit of the church without any formal declaration of trust shall be held upon the trusts and subject to the provisions of "The Model Trust Deeds of the Presbyterian Church of Victoria" or either of them so far as the same may be applicable or any future alteration modification or variation thereof duly authorized by the General Assembly, which alteration modification or variation the General Assembly is hereby empowered from time to time to make. Provided that nothing in this section shall empower the General Assembly to make any alteration modification or variation which shall be inconsistent with the provisions of the said Act passed in the twenty-second year of Her present Majesty numbered LXXXII.

Certain property to be held in trusts of Model Trust Deeds.

19. Where any property other than the properties known as Ormond College the Scotch College and the Presbyterian Ladies' College is held upon any trust or trusts other than those contained in "The Model Trust Deeds of the Presbyterian Church of Victoria" or either of them, if such property is held on behalf of or occupied or used by or for the purpose of any congregation or the minister thereof, it shall be lawful for such congregation by a vote of the majority of the members and adherents thereof present in person or by proxy at a meeting duly convened for that purpose and with the approval of the General Assembly and of the trustees or a majority of them and of the person lawfully appointed as the ordained minister of such congregation, and if such property is held for or on behalf of the church generally, and is not held on behalf of or occupied or used by or for the purposes of any congregation or the minister thereof it shall be lawful for the General Assembly to resolve that such property shall from and after the passing of such resolution be held upon the trusts of the said Model Trust Deeds or one of them and thereupon the trusts upon which such property was held previously to the passing of such resolution shall absolutely cease and determine, and such property shall thenceforth, but subject and without prejudice to any mortgage charge encumbrance lien or lease affecting the same, be held by the trustee or trustees thereof upon the trusts of the said Model Trust Deeds or one of them or any future alteration modification or variation thereof duly authorized by the General Assembly.

Model Trust Deeds may be adopted in other cases.

Conveyances transfers
etc. by majority of
trustees sufficient.

20. When any sale mortgage exchange or lease of any church land (whether held upon the trusts of "The Model Trust Deeds of the Presbyterian Church of Victoria" or either of them or otherwise) is made in pursuance of and in conformity with such trusts or the trusts upon which the same is held

- (1) the transfer conveyance mortgage exchange or lease shall be made with the consent in writing of the Moderator and shall have no force or effect without such consent: Provided that this subsection shall not apply to any mortgage or lease of any church land which the trustees thereof by virtue of the Act or deed under which the same is held have at the time of the passing of this Act power to mortgage or lease without the consent of the General Assembly, but such trustees shall nevertheless give notice in writing to the Moderator of any such mortgage or lease prior to the execution thereof.
- (2) the transfer mortgage exchange or lease of such land if under the operation of the Transfer of Land Act 1890 shall be as effectual, if signed by a majority of the trustees for the time being of such land named in the "Register of Trustees" (hereinafter mentioned) as if such transfer mortgage exchange or lease had been duly signed by all the trustees so named; and
- (3) In case such land shall not be under the operation of the said Act, the conveyance mortgage exchange or lease thereof, if executed by a majority of the trustees for the time being thereof named in such "Register of Trustees", shall be deemed to pass the legal estate therein as fully and effectually as if all the trustees in whom the legal estate was vested had joined in executed or made such conveyance mortgage exchange or lease.

Absent trustee may
execute conveyances or
transfer by attorney.

Provided that any trustee absent from Victoria may join in any contract for sale mortgage exchange or lease and may execute any such conveyance transfer mortgage exchange or lease as aforesaid by his attorney duly appointed by him in that behalf.

"Register of Trustees"

21. (1) The Moderator shall keep or cause to be kept a "Register of Trustees" of all property other than property vested in the corporate body of trustees hereinbefore mentioned:

- (2) Such register shall be called and inscribed as "The Presbyterian Register of Trustees", and shall be in the form and to the effect in the Second Schedule hereto: Name of register
Second Schedule
- (3) The Moderator shall with all reasonable despatch enter or cause to be entered in such "Register of Trustees" the names and additions of the present trustees of such property with all other particulars indicated in the Second Schedule hereto: Second Schedule. Entry of and names of trustees in register
Second Schedule
- (4) The Moderator shall from time to time, upon the due appointment of any new trustee or trustees of any church property, insert or cause to be inserted in such "Register of Trustees" the name and addition of such new trustee or trustees, together with the date of the insertion of his or their name or names in such "Register of Trustees" and how the vacancy in the trust occurred whether by death or otherwise: New trustees to be entered in register
- (5) The Moderator shall sign his name in such "Register of Trustees" in the proper column in the same line with the name of every trustee, whether he be an old or a new trustee, to authenticate the due appointment of such trustee: Verification of appointment of trustees
- (6) The Moderator may at any time or times issue a certificate, in the form or to the effect in Part II, of the First Schedule hereto, under his hand stating who is or are the trustee or trustees of any particular property specified therein at the date of such certificate, and who was or were such trustee or trustees at any particular date specified in such certificate; and Certificate as to trustee
First Schedule
- (7) Such "Register of Trustees" shall on all reasonable occasions be open to the inspection of the members of the said church and all others interested therein. Register to be open to inspection
22. The Moderator may at any time amend the "Register of Trustees" by rectifying any error or supplying any omission therein, and shall attest such amendment by writing his initials in the margin together with the date of his so writing, but shall not erase or render illegible the part so amended, and the register so amended shall have all the validity and operation by this Act conferred upon the "Register of Trustees". Amendment of register

Legal estate to pass to new trustees without conveyance.

23. Upon the insertion and authentication as aforesaid in the "Register of Trustees" of the name or names of any new trustee or trustees of any property not under the operation of the Transfer of Land Act 1890, such property shall forthwith vest in such new trustee or trustees solely or jointly (as the case may be) with the continuing trustee or trustees (if any) for all the estate or interest of the former trustee or trustees therein, and upon and subject to the same trusts without any conveyance or assignment whatsoever and upon the insertion and authentication as aforesaid in the said "Register of Trustees" of the name or names of any new trustee or trustees of property under the operation of the said Act such new trustee or trustees for the time being thereof and the trustee or trustees for the time being appearing by the "Register of Trustees" to be the trustee or trustees of any property under the Transfer of Land Act 1890 shall be entitled to be registered at the Office of Titles as the proprietor or proprietors thereof within the meaning of the said Act without any formal transfer, and to have a certificate of title issued to him or them as such proprietor or proprietors, but subject to any then subsisting encumbrance appearing upon the register book affecting the same.

Proof of entries in register and certificates.

24. The entries in the "Register of Trustees" authorized by section twenty-one of this Act to be made therein when authenticated by the signature of the Moderator, and any certificate duly signed by the Moderator under the provisions hereof shall respectively be received in evidence in all legal proceedings and in all proceedings before the Commissioner of Titles or Register of Titles and on all occasions whatsoever as prima facie evidence of all matters contained or recited in such entries, when the "Register of Trustees" is produced and of all matters contained or recited in such certificate is produced.

Rules

25. (1) The General Assembly may, in accordance with the rules practice and usages for the time being recognised by the church, from time to time make rules

- (a) for the appointment and removal of members of the corporate body of trustees and filling up vacancies occurring in the trusteeship;
- (b) for the custody of the seal of the corporate body of trustees, and the affixing the same to any document, and for verifying the affixing thereof; and

- (c) for the appointment and removal of the trustees and filling up of vacancies occurring in the trusteeship of any property not vested in the corporate body of trustees and not held under any Act of Parliament or deed containing any specific provision for the appointment and removal of trustees; and
- (d) for carrying into effect the provisions of this Act and may from time to time alter or vary the same.

(2) A copy of every such rule and of any alteration or variation thereof certified by the Moderator shall be deposited with the Registrar-General, and advertised in the Government Gazette.

(3) A duly certified copy of any such rule alteration or variation so deposited and advertised shall be prima facie evidence of the same having been duly made.

**FIRST SCHEDULE
(Sections 9 & 21.)**

CERTIFICATES AS TO TRUSTEES OF CHURCH PROPERTY

PART I

I hereby certify that there are no trustees of (here specify particular church property).

Dated this day of 20

Moderator

PART II

I hereby certify that (here insert names and addresses of the trustees for the time being or for the time specified (as the case may be) as shown by the Register of Trustees) are (or were on the day of 20) the trustees of (here specify the particular church property).

Dated this day of 20

Moderator.

SECOND SCHEDULE
(Section 21.)

"THE PRESBYTERIAN REGISTER OF TRUSTEES."

Folio (words of description such as "St Andrew's Presbyterian Church, 21 McIntyre Street, Hamilton") "comprised in conveyance registered the day of 20 No of Memorial (insert) Book " (insert).

If under the "Transfer of Land Act 1890" (insert) "comprised in Certificate of Title entered in Register Book, Vol. (insert). Fol (insert) ." (If Crown reservation or other title, concisely specify.)

Name of Trustee	Addition of Trustee.	Date of Appointment of new Trustee.	Date of Insertion of name of new Trustee herein.	How Vacancy occurred in Trust, such as death or the like.	Date of ceasing to be a Trustee and cause.	Signature of Moderator.
A.B.	Bourke St west. Melbourne, merchant					
C.D.	Similar.					
E.F.	"					
G.H.	"					
I.I.	"					
K.L.	"					
M.N.	"					
O.P.	"	2 Dec., 1890.	1 Jan. , 1891.	By death of A.B ., a former Trustee.		

Part III

RESOLUTION
RELATING TO THE FORMATION OF THE CORPORATION

Resolution passed by the General Assembly of the Presbyterian Church of Victoria, under Section 3 of the Presbyterian Trusts Act 1890, and advertised in the Government Gazette. under Section 5 of said Act.

(Vide Government Gazette, November 28th, 1890, page 4592.)

It is hereby notified that the following is a certified copy of a resolution which was passed by the General Assembly of the Presbyterian Church of Victoria on the 21st day of November, 1890, viz.:

- (a) That a corporate body of Trustees be constituted for the purpose of holding property in trust for the said Church.
- (b) That the following persons, who are hereby nominated as Trustees, be the corporate body of Trustees. viz. : -The Moderator of the said General Assembly for the time being; Hon. Sir James MacBain, Hon. William Anderson, Hon. James Balfour, Mr. John Lang Currie, Hon. John Mark Davies, Messrs. Thomas James Finlay, Andrew Harper, B.D., Robert Harper, James Kinninmonth, William Lewis. Duncan Love. Alexander Morrison. LL.D., James Richmond, Robert Simson and William Taylor.
- (c) That such Trustees be incorporated under the name of "The Presbyterian Church of Victoria Trusts Corporation. "

That such certified copy of a resolution has been this day registered by me, in pursuance with section 5 of the said Act, and such Trustees are therefore incorporated under the name of "The Presbyterian Church of Victoria Trusts Corporation."

E. R. BARRY,
Deputy Registrar-General.

Registrar-General's Office, Melbourne, 21st
November, 1890.

Part IV**RULES
MADE UNDER THE ACT**

Rules made by the General Assembly of the Presbyterian Church of Victoria under Sections 12, and 25 of the Presbyterian Trusts Act 1890, and advertised in the Government Gazette on December 12th, 1890, page 5062, and on August 10th, 1977, page 2602.

A. – Corporation Trustees.

1. The first members of the corporate body of trustees, which body is hereinafter called “The Corporation,” shall be appointed by a resolution of the General Assembly in pursuance of section 3 of the said Act.
2.
 - (1) On and after the rising of the House at the conclusion of the 1993 General Assembly the number of members of the Corporation shall be ten.
 - (2) On and after the rising of the House at the conclusion of the 2010 General Assembly the members of the Corporation shall be the members of the Board of Investment and Finance of the General Assembly as elected in accordance with its Regulations for the time being, and
 - (3) After the said fifteenth day of July, 1977, no persons shall continue to be a member of the Corporation –
 - (i) pursuant to any resolution of the General Assembly made prior to the first day of July, 1977; or,
 - (ii) after he has ceased to be a member of the said Board of Investment and Finance.
3. The fact that the membership of the Corporation has for any reason fallen below ten shall not invalidate any action proceeding or resolution of the Corporation so long as a quorum was present at any meeting at which such action or proceeding took place or resolution was adopted.
4. The General Assembly may remove any member of the Corporation who shall cease to be a member or adherent of the Presbyterian Church of Victoria, or who shall leave Victoria and remain absent without leave for six-months in succession, or who shall be absent without leave from six successive meetings of the Corporation, or who shall become incapable to act by reason of bodily or mental infirmity, or who shall become insolvent, or compound with his creditors, or who shall be guilty of any conduct rendering him, in the opinion of the said General Assembly, unfit to act as a trustee.
5. The General Assembly shall be the sole and final judge of the incapacity or unfitness to act of any trustee.

6. The seal of the Corporation shall be kept in the custody of the General Manager appointed pursuant to the regulations made by the General Assembly anent the Board of Investment and Finance, and there shall be two keys to the seal, one of which shall be kept by the chairman of the said Board, and the other by the General Manager; and the seal shall be affixed to documents only in pursuance of a resolution of the Corporation, or of a committee appointed by the Corporation from the trustees, with authority to act either generally or specially in the matter, of which committee three trustees shall form a quorum, and the affixing thereof shall be verified by two of the trustees, a law officer of the Church, and the said General Manager, provided that if the affixing of the seal shall be duly verified as hereinbefore provided, such verification shall be sufficient evidence that the affixing thereof was duly authorised by a resolution of the Corporation.

7. A reference in these rules to the holder of any office shall be deemed to include any person duly appointed in an acting or temporary capacity to perform the duties of that office.

8. The Corporation shall appoint one of its members to be chairman, and two other of its members to be vice-chairmen, and may at any time revoke such appointments. Meetings of the Corporation may be called at any time by or by the direction of the chairman, or in his absence by or by the direction of one of the vice-chairmen, and shall be called on a requisition by any three trustees.

9. Two days' notice of every meeting shall be given to the trustees.

10. Three trustees shall form a quorum at every such meeting.

B. – Rule Relating to the Consent of Moderator to Dealings with Property.

11. The consent of the Moderator to any transfer, conveyance, mortgage, exchange, or lease, under section 20, sub-section 1, of the said Act shall not be given unless a law agent of the Church shall first approve thereof.

**C. – Rules Relating to Trustees of Congregational
Property not vested in the Corporation.**

12. Trustees of property not vested in the Corporation and not held under any Act of Parliament or deed containing any specific provision for the appointment and removal of trustees shall be appointed and vacancies filled up as follows:-

13. The real property of each congregation is vested in trustees, whose powers and duties are defined in the Model Trust Deed. The number of trustees for any congregation is not less than three nor more than five. They are nominated by the congregation, who, at a meeting duly called for the purpose, select for the office the number of persons required, and transmit the list to the presbytery of the bounds by whom the appointment is made. The parties nominated must all be members or adherents of the Presbyterian Church of Victoria, and free from church scandal.

14. Trustees, after being nominated by the congregation, and before their appointment by the presbytery, shall subscribe a declaration agreeing to hold the property in trust for the Presbyterian Church of Victoria conformably to such rules as the Assembly may determine. This declaration when signed is forwarded to the clerk of presbytery to be kept by him in retenis.

15. Trustees after their appointment by the presbytery, and immediately after the property is vested in them, are required to subscribe a further declaration acknowledging the jurisdiction of the Presbyterian Church of Victoria over the property intrusted to their charge. This declaration on being subscribed by them is forwarded to the Clerk of the General Assembly, by whom it is deposited with the other documents of the Church that are to be kept in secure custody for the church.

16. Any such last-mentioned trustee may be removed by a resolution of the presbytery in which the property of which he is a trustee is situated, or of the General Assembly, on any of the following grounds:-

- (a) That he has been called upon to resign by the congregation for which he is a trustee, which call has been approved and confirmed by the presbytery, and has refused or neglected to resign.
- (b) That he has ceased to be a member or adherent of the said congregation.
- (c) That he has removed his residence to a distance of 160 kilometres from the place of worship of the said congregation for at least twelve consecutive months.
- (d) That he has refused to exercise or execute any of the powers and authorities reposed in him as trustee when lawfully required so to do.
- (e) That he has disobeyed or neglected or refused to carry out any order, instruction, or decision of the General Assembly or the said presbytery.
- (f) That he has been declared by the General Assembly to have been guilty of conduct unbecoming a trustee.

17. Any such trustee may resign his trust.

18. Notice of the appointment of every new trustee and of the removal of any trustee of Church property shall be sent to the Moderator by the clerk of the presbytery making the appointment or removing such trustee within one week after such appointment or removal.

19. Notice of the death or resignation of any trustee shall be sent to the Moderator of the General Assembly and to the clerk of the presbytery by the clerk of the session or the minister of the congregation to which such trustee belonged within one week after such death or resignation becomes known to such clerk or minister.

* Regulations enacted by the General Assembly on the 11th October 2017.

Part V**RESOLUTION**

RELATING TO ORMOND COLLEGE, THE SCOTCH COLLEGE, AND THE
LADIES' COLLEGE, AND VESTING THE PROPERTIES IN THE
CORPORATION, UNDER SECTION 6 OF THE "PRESBYTERIAN TRUSTS ACT
1890."

The General Assembly of the Presbyterian Church of Victoria doth hereby in pursuance of Section 6 of the "Presbyterian Trusts Act 1890," by a special vote in this behalf direct that the properties known as Ormond College, the Scotch College and the Presbyterian Ladies' College, shall respectively vest in "The Presbyterian Church of Victoria Trusts Corporation" as soon as all mortgages, charges, or encumbrances thereon, respectively, have been discharged, or the said Corporation by Memorandum in writing undertakes to answer any liability in respect of such mortgages, charges, or encumbrances, respectively.