

Our reference
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5 July 2004

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Dear Danny

**THE TRUSTEES FOR THE ROMAN CATHOLIC ARCHDIOCESE
OF SYDNEY - ADVICE ON WHETHER APPROPRIATE AS
DEFENDANT**

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- 1 I refer to your email of 7 May 2004, and to our conversation of 11 May 2004.
- 2 You have asked me to consider whether it would be appropriate to identify the Trustees for the Archdiocese of Sydney ("**Archdiocese**") as the defendant in any legal proceedings commenced against an entity of the Archdiocese. You have asked me to consider this question in light of what has been the Archdiocese's current practice, namely, to identify the Trustees as the appropriate defendants in litigation against the Archdiocese.
- 3 I note that to a large extent this advice draws on the advice previously provided in letters addressed to Michael Casey regarding the Trustees for the Roman Catholic Archdiocese of Sydney ("**Trustees**") dated 29 January 2004 and 2 March 2004.
- 4 This advice refers to the provisions of the *Roman Catholic Church Trust Property Act 1936* (NSW) ("**NSW Church Act**"), and where appropriate, the legislation under which the Roman Catholic Trust Corporation for the Diocese of Melbourne ("**RCTC**") was established, being the *Roman Catholic Trusts Act 1907* (Vic) ("**Vic Church Act**").

Executive Summary

- 5 In summary, our advice in relation to the issues set out in paragraph 3 above is as follows:
- (a) It is inappropriate to determine a policy that will be appropriate in all legal proceedings. Each case should be approached on the basis of its specific facts;
- (b) We would counsel against the Archdiocese adopting a general policy of naming the Trustees as the defendant in legal proceedings, because this may deprive the Archdiocese of:
- (i) the use of various "technical defences" [which it may be duty bound to run – see comment re: insurance obligations over page];
- (ii) the possibility of issuing cross-claims for contribution and/or indemnity against third parties on the basis that it has acted as a volunteer and assumed a liability that it does not have at law; and
- (iii) the benefit of any insurance contract it may have, because under many common public liability and professional indemnity policies, insurers are entitled to deny indemnity where an insured has "assumed a liability under contract" that goes beyond the liability it would otherwise have had.
- (c) We also believe that it is in the Archdiocese's interests to adopt an approach consistent with that of the Archdiocese of Melbourne.

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- (d) Accordingly, the most appropriate approach for the Archdiocese to adopt is to let the potential plaintiffs work out for themselves who they think they should sue, let them plead their claims, and then take steps, if they be available, to strike out or summarily dismiss any such claim on the basis, amongst others, of an incorrectly named defendant.
- (e) In our opinion, the above course is an appropriate one despite the Archdiocese's previous practice of putting forward the Trustees as appropriate defendants and does not detract from the Archdiocese's ability to centrally and uniformly manage claims made against it and related entities by mandate.

Background

- 6 You have asked us to consider the prudence of identifying the Trustees as the defendant in any legal proceedings that are commenced against the Archdiocese.
- 7 To a large extent the Archdiocese will often have a 'reactive' role in putting forward an appropriate defendant. This will be the case because to commence legal proceedings a plaintiff must have already taken steps to identify a particular Church entity as the proper defendant.
- 8 As a result, the role of the Archdiocese may be restricted to either seeking that the appropriate defendant be substituted in the proceedings or applying to have the proceedings discontinued on the basis the incorrect defendant has been named or the named defendant is not an entity recognised at law. The later course may be appropriate where the plaintiff has sought to commence proceedings against the 'Catholic Church' or the 'Archdiocese of Sydney' which are not legal entities known to the civil law and therefore cannot be sued.
- 9 However, in some circumstances, including where a substitute defendant must be nominated, it will be necessary for the Archdiocese to name or volunteer an appropriate defendant to defend legal proceedings against it.

Experience of the Archdiocese of Melbourne

- 10 Our response to these issues has been developed in light of our past experiences with the RCTC, which is established by the Vic Church Act, and whose legal position is directly analogous to that of the Trustees.
- 11 It is our understanding that in recent years a practice has developed among the plaintiff firms in Melbourne to name the RCTC as defendants in an attempt to sue the Archdiocese of Melbourne. Generally speaking, the RCTC is named as the defendant on the basis that it is the registered proprietor of land upon which a tort, criminal act or assault allegedly took place and therefore, the plaintiffs argue that in these cases an occupiers liability arises. The

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practice in Melbourne has been to defend these claims on the basis that occupiers' liability does not extend to these situations.

- 12 There are clear parallels between the situation in Victoria and in New South Wales. The NSW Church Act and the Vic Church Act are directly comparable, both establishing a scheme whereby the RCTC and the Trustees are the registered proprietors of a significant portfolio of properties.
- 13 Based on the experience of the Archdiocese in Victoria, we believe that it is likely that plaintiff firms in New South Wales will, with increasing frequency, seek to name the Trustees as the defendant in litigation. Undoubtedly, this approach is motivated principally by a perception that the Trustees are the Church entity most capable of being able to satisfy any monetary judgment against it.

Criminal Liability of the Archdiocese

- 14 In light of three recent High Court cases: *Lepore v State of New South Wales*, *Samin v State of Queensland*, and *Rich v State of Queensland*,¹ ("*Lepore*") it is also worth briefly considering whether the Archdiocese could be found liable for the criminal acts of clergy or its employees. As this issue is outside the scope of your instructions, we have not considered it comprehensively. However, if you would like us to advise you on this matter further, please do not hesitate to contact us.
- 15 In *Lepore*, the High Court concluded that in the absence of fault, a school authority would not be held liable for the intentional criminal conduct of an employee. While stating that State education departments owe a general duty to take reasonable care for the safety of students, sexual abuse was considered to fall outside of the scope of course of employment. Accordingly, the Court characterised these actions as misconduct in breach of contractual duties and concluded that that intentional and criminal acts by teachers precluded the imposition of liability on school authorities.
- 16 In relation to the approach adopted by claimants in Victoria, the following decision concerning occupiers liability is also relevant. In the decision of *Modbury Triangle Shopping Centre Pty Limited v Anzil*,² ("*Modbury Triangle*") the High Court found that Australian law does not require a person to prevent a third person from harming another (particularly if they are merely the owner/occupier of a premises). However, it also found that if a person had knowledge of previous preventable criminal conduct or threats of such

¹ (2003) 195 ALR 412. These three matters were decided together.

² 5 December 2000

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conduct, it would be arguable that such knowledge may give rise to an exceptional duty to prevent harm to a third party in that particular case.

- 17 The ramifications of the approach adopted in *Lepore* and *Modbury Triangle* for the Archdiocese are significant. It is arguable, on the basis of *Lepore*, that unless it can be demonstrated that clergy or an employee of the Archdiocese were acting in the course of their employment (for example, by administering discipline), or in the case of *Modbury Triangle*, that the Archdiocese had the means of foreseeing the potential for criminal conduct to occur but failed to take steps to avoid this risk, the Archdiocese will generally be able to avoid liability.
- 18 It follows from the above that absent knowledge, or the pleading of facts establishing beyond doubt proof of the allegation, it is not appropriate to volunteer or substitute the Trustees as the defendant in criminal proceedings.

Existing practice of naming the Trustees as the proper defendant

- 19 There are a number of cases which have proceeded on the assumption that the Trustees are the correct defendant.³ However, as you note in your email of 7 May 2004, this appears to be a matter of convention rather than an obligation of law.
- 20 One case where the Trustees were named as the defendant was *Nobrega v Trustees of the Roman Catholic Church for the Archdiocese of Sydney (No 1) ("Nobrega")*.⁴
- 21 In *Nobrega*, the plaintiff was a student at the De La Salle College, Ashfield who was injured while using a waterslide on a school outing. The De La Salle College was run by the Trustees of the De La Salle Brothers ("**De La Salle Brothers**"), a body corporate established pursuant to the *Roman Catholic Church Communities Lands Act 1942* (NSW) ("**Lands Act**"). The Lands Act charged the De La Salle Brothers with, amongst other things, "*the operation and conduct of educational, welfare and health institutions, organisations or other bodies...*". The Trustees were sued as representatives of De La Salle Brothers.
- 22 The remarks of Powell JA in *Nobrega*, support the conclusions that we reach later in this advice. In summary, Powell JA appears to support the view that in cases where the Trustees are simply holding land on trust for the use or

³ see, for example, *Hogan v The Trustees of the Roman Catholic Church for the Archdiocese of Sydney* [2003] NSWSC 264; *The Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Kondrajian* [2001] NSWCA 308, [2001] ACL Rep 300 NSW 81.

⁴ [1999] NSWCA 75.

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benefit or for the purposes of the Roman Catholic Church in New South Wales, they are not the proper defendant, and accordingly, should not be named as such. However, in circumstances where the Trustees are engaged in activities which go beyond simply holding land on trust, and are in, for example, the position of the De La Salle Brothers in *Nobrega*, the Trustees may well be the correct defendant.

23 Specifically, Powell JA in obiter stated:⁵

"I would take leave to doubt that the Trustees - a body corporate constituted pursuant to the provisions of the Roman Catholic Church Property Trust 1936 - was properly sued as such representative. Rather, I would have thought that, if - which I doubt - any such body corporate were properly to be sued as such representative, it would have been the Trustees of the De La Salle Brothers which is constituted pursuant to the provisions of the Roman Catholic Church Communities Lands Act 1942 as the Trustees of community land for the Brothers of the Christian Schools. However, when the question was raised on the hearing of the appeal, Mr. S.A. Woods, who appeared for the Trustees, inform [sic] the Court that he was instructed not to take any point and to seek to have the matter determined on its merits." [our emphasis]

⁵ At para [10].

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- 24 The comments of Powell JA also go some way to addressing any concerns about the reaction of the judiciary to a new 'practice' of not naming the Trustees as defendants.
- 25 Put simply, we consider it likely that judges will take a similar approach to Powell JA. In other words, they will only expect the Trustees to be named as defendant where the Trustees are engaged in activities which go beyond simply holding on trust the land on which the negligence or other harm is alleged to have occurred.

Claims for Contribution and/or Indemnity

- 26 A further consequence of the Archdiocese knowingly assuming the role of named defendant is that it may limit the Archdiocese's legal ability to successfully prosecute cross-claims for contribution and/or indemnity against third parties after it has settled a claim with a claimant or run to judgment and lost. If the Archdiocese or in its name, its insurer, has, in essence acted as a 'volunteer' and assumed liability, it may not be entitled to indemnity or contribution pursuant to section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946 (NSW)* ("LRMP Act").
- 27 When considering a contribution question under section 5 of the LRMP Act, the questions to be asked are as follows:
- (a) is the Archdiocese a tort-feasor liable in respect of damage suffered by the claimant?
- (b) is the third party a tort-feasor who would, if sued by the claimant have been liable in respect of the same damage?

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- 28 If the answer to the question recorded at paragraph 26(a) is "no" because the Archdiocese, assumed liability and volunteered as a defendant, any cross-claim against a third party may not succeed on the basis that the Archdiocese falls outside of the scope of the contribution statute. For example, in allowing itself to be the named defendant in *Nobrega* where arguably it had no liability to do so, the Archdiocese may have had a cross-claim against, say, the manufacturer of the waterslide struck-out.
- 29 The risk can be remedied by drafting any settlement documentation in a claim where the Archdiocese has "volunteered" to be the defendant to reflect the fact that the responsible party is another entity such as the De La Salle Brothers. It cannot be remedied in a situation where a claim has run to judgment and the Archdiocese is found liable as the judgment will record the defendant as the entity pleaded.

Insurance Issues

- 30 Where the Archdiocese by agreement or conduct assumes liability for claims that are legally the responsibility of other entities, its insurer is entitled to deny indemnity under most contracts of professional indemnity and/or workers compensation and/or public liability insurance. In short, insurers will usually have no liability to indemnify an insured where a liability has been assumed under contract. It would be necessary to review the policies of insurance in question to determine whether other entities such as the De La Salle Brothers, for example, are also named insureds on the policies.
- 31 Assuming that the liable entity is not a named insured on the Archdiocese's policies and assuming that the relevant policies do in fact contain exclusions along these lines, this legal principle can have serious financial consequences for the Archdiocese and can deprive it of access to insurer funds for use in the defence and settlement of civil claims.
- 32 Each insurance policy conveys different contractual powers upon the insured and insurer. Some policies provide that an insurer can settle or defend a claim in the name of the insured at will (subject always to the duty of utmost good faith recorded below). Some policies provide the insured with power to "veto" settlement. Generally speaking, in a claim where the insurer has extended indemnity to the insured, it will have a significant say in how the claim is managed. Depending upon the terms of the individual policy, insurers generally expect insureds to take all legal avenues available to defend a claim. This includes making application to strike out a claim where it has incorrectly been named as the defendant.
- 33 Another issue to consider is the Archdiocese's duty of utmost good faith to its insurer. Likewise, the insurer owes a reciprocal duty to the Archdiocese. Breach of this duty by either party acting contrary to the interests of either

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party can jeopardise entitlement to indemnity and a cohesive claims management approach.

- 34 The propositions recorded above represent additional reasons why the Archdiocese should not assume the defence of claims where it has no liability to do so and why it should review the circumstances of every individual claim and relevant insurance policy before making a decision either way.

Alternative defendants: Theory of 'Corporation Sole'

- 35 The Corporation Sole argument is an argument that some plaintiffs have sought to run, we say wrongly, that the office of Archbishop is a Corporation Sole. The argument seeks to demonstrate that the office of Archbishop is a legal entity capable of being sued, separately and distinctly from the individual who happens to be Archbishop at the time. In our view, the Archbishop of Sydney is not a Corporation Sole because there is no legislation which establishes the office of Archbishop, and there is no relevant case law on this point.⁶ In addition, there is legislation in Western Australia which establishes the Archbishop of Perth as a Corporation Sole. We say that this also supports the argument that at common law a Catholic Bishop is not a Corporation Sole.
- 36 This distinction is of particular significance in cases where a plaintiff attempts to commence proceedings for abuse that occurred twenty years ago, and alleges that the then Archbishop knew but failed to stop the alleged abuse. Assuming that the Archbishop of twenty years ago is now deceased, we would argue that you cannot sue the present day Archbishop on the basis that he is the Archbishop now. Clearly, this argument is of some significance as it means that a plaintiff can only succeed against an Archbishop who is alive and who has himself committed a particular act.

Conclusions

- 37 Given the above, we would counsel against the Archdiocese adopting the practice of naming or volunteering the Trustees as the appropriate defendant for four reasons, namely:
- (a) This would deprive the Archdiocese of the use of various "technical defences" in relation to sexual and physical abuse claims. In this regard, it is likely that a plaintiff will allege that the Trustees are liable for acts of, for instance, a teacher or a priest, on the basis that the Trustees operated a school or an orphanage, or engaged priests or nuns for that purpose. However, our experience in Victoria is that any such claims can be defeated by a summary judgment application, and by

⁶ See *Roman Catholic Archbishop of Perth v AA to JC inclusive; DJ v Trustees of the Christian Brothers* (1995) 18 ACSR 333.

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arguing that the Trustees are not an "operating entity" as such, but simply hold property on trust, as well as arguing that clergy are not employees.

We note however, that the powers of the Trustees, as set out in the NSW Trust Act are significantly broader than those of the RCTC as are contained in the Vic Trust Act.⁷ Accordingly, depending upon the specific powers which are exercised by the Trustees, it may be more difficult to argue in NSW than Victoria that the Trustees are not an "operating entity" in some circumstances.

- (b) We consider that by assuming or volunteering to be the named defendant, in civil claims, the Archdiocese may potentially lose the ability to successfully prosecute a cross-claim against third parties.
- (c) We consider that by assuming or volunteering to be the named defendant, in civil claims, the Archdiocese may potentially lose the benefit of insurance cover by virtue of its assumption of liability under contract.
- (d) We also believe that it would be in the Archdiocese's best interests to adopt an approach which is consistent with that which is adopted in other jurisdictions. The rationale for this belief is threefold:
 - (i) in our view, the approach that has been adopted by the Archdiocese of Melbourne has been successful, and while there are some differences between Victoria and New South Wales, we do not see any reason why it would not also be successful in New South Wales in appropriate cases?
 - (ii) by adopting an approach which is consistent with that in Melbourne, the Trustees and the Archdiocese will be able to draw upon the Melbourne experiences. The experience of our Melbourne Office is available to the Archdiocese in addressing all of these issues; and
 - (iii) consistency will make it more difficult for plaintiff firms to play one Archdiocese off against another.

38 It is not appropriate or prudent to volunteer or substitute the Trustees as the defendant in any criminal proceedings against the Archdiocese.

39 In our view, despite the Archdiocese's previous practice of naming the Trustees as defendant, the judiciary is likely to expect that the Trustees be named defendant only in circumstances where they are an operating entity in the relevant sense. We consider it unlikely that the judiciary would consider

⁷ Compare section 4(1) and 9 of the NSW Trust Act with sections 3, 6 and 15 of the Vic Trust Act. The content and operation of these provisions was discussed extensively in our letter of 2 March 2004. The relevant sections of that letter are set out for your convenience in the Schedule to this advice.

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the Archdiocese obliged to volunteer the defendant with the deepest pockets regardless of the circumstances of the case.

- 40 Accordingly, in circumstances where the Trustees are simply holding property on trust, the Trustees:
- (i) should be able to defeat any allegation of liability for, for instance, the acts of a teacher or priest, on the grounds that it is not an operating entity and that the clergy are not employees; and
 - (ii) is not the proper defendant, and should not be named as such.
- 41 However, in circumstances where the Trustees are engaged in "other activities", it may be more difficult for the Trustees to argue that it is not the proper defendant.
- 42 As a result, we believe that the most appropriate approach for the Archdiocese to adopt is to simply let the potential plaintiffs work out for themselves who they think they should sue, let them plead their claims, and then take such steps as may be available to strike out or summarily dismiss any such claim.
- 43 If you have any further questions, or wish to discuss, please do not hesitate to contact me on (02) 9210 6232 or Anna Ross on (02) 9210 6904.

Kind regards

Paul McCann
Partner

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SCHEDULE

1 Differences between the powers of the Trustees in NSW and Victoria

At paragraph 28 of our primary advice we referred to the fact that the “powers of the Trustees, as set out in the NSW Church Act are significantly broader than those of the RCTC as are contained in the Vic Church Act”. As a result of this we remarked that “depending upon the specific powers which are exercised by the Trustees, it may be more difficult to argue in NSW than Victoria that the Trustees is not an operating entity”.

In this regard we note that whereas the Vic Church Act establishes the RCTC “for the purpose of holding managing and dealing with property within such diocese in trust for the benefit of the Church”,⁸ the Trustees were established to hold property on trust and to conduct “other activities which are or may be for the benefit of the Roman Catholic Church...”.⁹ Furthermore, whereas the powers of RCTC are limited to powers associated with the holding of property on trust, the Trustees is given “all of the powers of a natural person”,¹⁰ and a range of other powers including for example, the power to apply for and obtain, in certain defined circumstances, representation of any deceased person being an ordained clergyman of the Church.¹¹

The practical effect of this difference is that the Trustees are empowered to do considerably more than hold property on Trust for the benefit or purposes of the Archdiocese. It is foreseeable that the Trustees may, for example, run a health or educational facility and in a case in which a tortious act is committed on the premises of such a facility it may be arguable that the Trustees is the proper defendant. Whether or not the Trustees are conducting “other activities” is a question of fact that will need to be assessed on a case-by-case basis.¹²

Where the Trustees are simply holding property on trust, the argument that applies in Victoria would also apply in New South Wales. Accordingly, in our view, in such circumstances claims could be defeated by a summary judgment application, and by arguing that the Trustees are not an “operating entity” but simply hold property on trust, and also by arguing that clergy are not employees.

44 The relevant legislation

The key relevant provisions of the NSW Church Act and Vic Church Act are:

⁸ Section 3 of the Vic Church Act.

⁹ Preamble to the NSW Church Act.

¹⁰ Section 4 of the NSW Church Act.

¹¹ Section 9A(1) of the NSW Church Act.

¹² It is of significance to note that the fact that the Trustees is engaged in “other activities” will be by no means determinative of liability.

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(a) NSW Church Act

(i) Preamble

"WHEREAS lands held on trust for or for the use or benefit or for purposes of the Roman Catholic Church in New South Wales are vested in many different bodies of Trustees, and owing to deaths and other causes, the necessity for the appointment of new Trustees frequently arises: AND WHEREAS it is expedient that bodies corporate be created for the purpose of holding, managing and dealing with lands so held, that provision be made for the vesting in bodies corporate to be created by this Act of lands so held, that conveyancing transactions in respect of lands so held be facilitated and rendered less expensive and also **that other activities which are or may be for the benefit of the Roman Catholic Church may be conducted by those bodies corporate:...** [our emphasis]"

(ii) Section 4

"The Trustees of Church trust property for each Diocese shall, by virtue of this Act, be a body corporate, having perpetual succession and a common seal, and being capable of acquiring, holding and disposing of any property, real or personal, and of suing and being sued in its corporate name, **and of doing and suffering all such acts and things as bodies corporate may by law do or suffer:** Provided that this subsection shall not operate to incorporate the Trustees of Church trust property in any diocese created after the commencement of this Act until the publication in the Gazette of the notification required by section 5. [our emphasis]"

(iii) Section 9 – Powers of Bodies Corporate

"A body corporate created by this Act has **all the powers of a natural person**, including (without limiting the scope of those powers) the power:

- (a) to purchase, take on lease, or acquire by gift, devise, bequest, exchange or otherwise any real or personal property,
- (b) in relation to any Church trust property at any time vested in it:
 - (i) to sell it, and to exchange it for other land, and to transfer or convey Church trust property so sold or exchanged to the purchaser or person

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taking in exchange, freed and discharged from all trusts affecting the same in the hands of the body corporate, and

- (ii) to demise or let it for such term at such rent and with or without taking a premium, fine or foregift and subject to such provisions as to the body corporate shall appear desirable, and
 - (iii) to accept surrender of leases, upon such terms and subject to such conditions as to the body corporate shall appear desirable, and
 - (iv) to raise money on the security of it on such terms and conditions as to the body corporate shall appear desirable, and
 - (v) to declare trusts of it or of any estate or interest in it created by the body corporate for any Order or Community of the Church or for any association of members of the Church or for the use or benefit of or for any purpose of any such Order, Community or association, and either to retain the property in relation to which trusts are so declared, or to vest it, or any estate or interest so created, in other Trustees upon the trusts so declared, and
- (c) to execute any document and to do any other thing the execution or doing of which, in its opinion, is necessary or convenient to achieve its objects."
- (iv) Section 9A – Additional Powers of Bodies Corporate
- "(1) Every body corporate created by this Act shall have power from time to time:
- (a) to apply for and obtain representation of the estate of any deceased person being an ordained clergyman of the Church of whose will such body corporate is the executor, or being a person under whose will the Church or any part thereof (not being a body corporate constituted by or under the Roman Catholic Church Communities' Lands Act 1942, as amended by

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subsequent Acts) or such body corporate is a beneficiary, and

- (b) to accept appointment and act as Trustees under and in pursuance of any trust created wholly or partially for the benefit of the Church or any such part thereof or such body corporate over or in respect of any property real or personal, and to do all things necessary to administer such estate or trust.

- (2) **Any officer authorised for the purpose by the body corporate may on behalf of the body corporate swear affidavits, make declarations, statements of defence or other statements, give security and do any other act or thing required by any Charter, Act of Parliament or rule of court to be made by persons making application for probate or letters of administration or administering any trust.**

- (3) Whenever the body corporate shall have been appointed executor, administrator or Trustees it shall be subject in all respects to the same control and to removal or restraint from acting and generally to the jurisdiction of the courts in the same manner as any other executor, administrator or Trustees and all the property real and personal of the body corporate and the members thereof and their respective estates shall be liable for the proper discharge of the duties of such office."

(b) Vic Church Act

- (i) Section 3 – Powers Of Council To Pass Resolution to Form Body Corporate to Hold Church Property

"A council may if it thinks fit pass a resolution expressing its desire—

- (a) that there be constituted within the diocese a corporate body of Trustees **for the purpose of holding managing and dealing with property within such diocese in trust for the benefit of the Church;**... [our emphasis]"

- (ii) Section 6 – Incorporation of Trustees of Church Property

"After the registration of any resolution passed under the provisions of section three hereof the Registrar-General shall

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notify the same 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 in their corporate name and may acquire take hold manage and deal with any property in trust for the Church within the diocese in which such resolution shall have been passed or for any person holding for the time being any office therein and may receive any moneys which have been or shall be given contributed or bequeathed by any person to be applied to any of the purposes of the Church and may take over any securities for money held by any person on behalf of the Church 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 a council of such diocese may from time to time by resolution direct but so as not to interfere with the jurisdiction of the Supreme Court in the enforcement of trusts."