

ROMAN CATHOLIC CHURCH (INCORPORATION OF CHURCH ENTITIES) BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The objective of the legislation is to provide a basis for the incorporation of religious bodies within the Roman Catholic Church.

Reasons for Bill

Pursuant to section 4 and the Schedule of the *Associations Incorporation Act 1981* ("the AI Act"), the *Religious Educational and Charitable Institutions Act 1861* ("the RECI Act") was repealed, although the repealed Act was deemed to continue to have full force and effect in respect of bodies incorporated by letters patent under its provisions prior to its repeal.

In its preliminary discussion papers of 1978 and 1979 on the then proposed Associations Incorporation Bill, the Queensland Law Reform Commission specifically recommended that the RECI Act not be repealed. The final report of the Law Reform Commission on the matter, published in 1980, was quite explicit in its support for the retention of the Act and recommended that it operate conjointly with the proposed AI Act, mainly to facilitate major religious bodies which were not specifically incorporated by statute.

When the Associations Incorporation Bill 1981 was debated in Parliament, the reason advanced by the then Minister for repealing the RECI Act was that it was "just not good enough administratively to cope with today's problems". No reference was made to the repeal being opposed by the Queensland Law Reform Commission. This new Bill addresses any concerns with respect to administrative deficiencies.

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*.

Estimated Cost for Government Implementation

No identifiable additional expenditure is occasioned by this initiative apart from minimal amounts required in relation to the acceptance of the lodgment of the relevant documents and to issue the necessary certificates of incorporation, which processes will be carried out by administrative staff already responsible for similar matters under the AI Act and the RECI Act.

Consultation

Thynne and Macartney, solicitors, sought the enactment of this Bill on behalf of their client, the Roman Catholic Archdiocese of Brisbane. Close consultation has occurred with Thynne and Macartney during the preparation of the Bill.

Major churches were also consulted and expressed support for the Bill.

The Office of State Revenue within the Treasury Department was consulted in relation to possible stamp duty exemptions.

Clause 515 of the Corporations Agreement required the Ministerial Council for Corporations to be notified of this Bill. This notification took place, and no objection was received from any of the States or Territories. The Commonwealth has advised it does not object to the Bill proceeding for the benefit of the Church.

The Department of Justice and Attorney-General supports the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act will commence on a day fixed by proclamation.

Clause 3 defines certain terms used in the Act.

Clause 4 states that, when applying the code of Canon Law to matters under the Act, the Code must be interpreted and applied consistently with decisions on such matters by those Church authorities who ordinarily decide them.

PART 2—ESTABLISHMENT AND COMPOSITION OF THE CORPORATION OF THE BISHOPS

Clause 5 establishes the Corporation of the Roman Catholic Bishops of Queensland.

Clause 6 provides that those persons for the time being holding appointment as Bishop constitute the Corporation of the Bishops.

Clause 7 states that the Corporation of the Bishops has perpetual succession, a seal and that it may sue and be sued.

Clause 8 requires the chief executive to immediately issue a certificate of incorporation for the Corporation of the Bishops.

PART 3—INCORPORATION OF CHURCH ENTITIES

Clause 9 provides that either the Corporation of the Bishops, or a Bishop (which includes an Archbishop by the definition in Clause 3), may ask the chief executive to incorporate a Church entity. The request to the chief executive must be in a certain form and state certain particulars.

Clause 10 provides that the chief executive, on receipt of a request under section 9 and on satisfaction that the requirements set out in that section have been complied with, must issue a certificate of incorporation for the Church entity. The Church entity becomes a corporation established under this Part on the issue of the certificate.

Clause 11 sets out the composition of the incorporated Church entity.

Clause 12 allows the corporation to have a seal and to sue and be sued in its corporate name. If the corporation has incorporators then the corporation has perpetual succession.

Clause 13 provides that anything done in the name of or for the corporation by a person who may act for the corporation is taken to have been done by the corporation.

PART 4—ESTABLISHMENT UNDER THIS PART OF CERTAIN CHURCH CORPORATIONS ESTABLISHED UNDER OTHER ACTS

Clause 14 states that this Part applies to either a Church entity which is an incorporated association under the AI Act or a Church entity which is a corporation, established by letters patent, under the RECI Act.

Clause 15 defines an "existing church corporation" for the purposes of this Part.

Clause 16 allows a Bishop or the Corporation of the Bishops to ask the chief executive to establish, under this Part, an existing Church corporation. The request must be in a certain form and state certain specified particulars.

Clause 17 states that, on receiving the request, the chief executive must issue a certificate of incorporation for the existing Church corporation. On the issue of the certificate, the existing Church corporation is established under this Part as a corporation with the same name and constitution.

Clause 18 sets out the composition of an existing Church corporation established under this Part.

Clause 19 provides that an existing Church corporation established under this Part has a seal and may sue or be sued.

Clause 20 states that anything done in the name of or for an existing Church corporation by a person who may act for the corporation is taken to have been done by the corporation.

Clause 21 sets out the effect of the establishment of an existing Church corporation under this Part, for example, the establishment of the corporation does not affect any right, entitlement, liability, exemption or benefit the corporation would have had apart from its establishment under this Part.

Clause 22 provides that the establishment of an existing Church corporation under this Part does not affect existing legal relationships.

Clause 23 states that on the issue of a certificate of incorporation under this Act for a corporation incorporated under the *Associations Incorporation Act*, the corporation ceases to be incorporated under that Act.

Clause 24 states that on the issue of a certificate of incorporation under this Act for a Church entity which is a corporation under the *Religious Educational and Charitable Institutions Act*, the letters patent under that Act for the corporation are cancelled.

PART 5—LEGAL CAPACITY AND POWERS OF INCORPORATED CHURCH ENTITIES

Division 1—Powers and legal capacity generally

Clause 25 states that in performing its objects or functions, an incorporated Church entity has all the powers and the legal capacity of an individual, and gives examples.

Division 2—Abolition of doctrine of ultra vires

Clause 26 states that the objects of this Division of the Act include both the abolition of any application of the doctrine of ultra vires to incorporated Church entities and ensuring that incorporated Church entities give effect to any restrictions on their powers, but without affecting the validity of their dealings with third persons.

Clause 27(1) states that section 25 of the Act applies to an incorporated Church entity, subject to any restrictions on its powers under its constituent documents and the Code of Canon Law. Subclause (2) states that the entity will contravene the subsection if the entity exercises a power contrary to a restriction mentioned in subsection (1), or the entity does an act that does not promote the objects or functions as set out in its constituent documents or the Code of Canon Law. Subclause (7) states that the fact that the entity contravened, or would contravene, subsection (2) of section 27 by exercising a power or doing an act, or, by doing a particular act, the officer of the entity contravened, or would contravene, subsection (4) of section 27, may only be asserted or relied on in proceedings brought by the Corporation of the Bishops, or with the written authority of the Corporation of the Bishops.

Clause 28(1) makes it clear that a person having dealings with an incorporated Church entity is entitled to make the assumptions mentioned in subsection (3), and, in a proceeding about the dealings, any assertion to the contrary by the entity must be disregarded. Subclause (2) states that a person having dealings with a person who has acquired or purports to have acquired title to property from an incorporated Church entity may make the assumptions mentioned in subsection (3). Subclause (3) sets out the assumptions that a person is, because of subsections (1) or (2), entitled to make.

Subclause (4) prevents a person from assuming a matter mentioned in subsection (3) if the person has actual knowledge that the assumption would be incorrect or the person ought to know that the assumption would be incorrect because of the person's connection or relationship with the entity. Subclause 5 sets out the consequences when, because of subsection (4), a person is not entitled to make a particular assumption.

PART 6—CHANGE OF NAME AND DISSOLUTION

Division 1—Change of Names of Incorporated Church Entities.

Clause 29 states that an incorporated Church entity, with the consent of a Bishop or the Corporation of the Bishops, may apply to the chief executive to change its name, and the chief executive may grant the application.

Clause 30 provides that the change of name of an incorporated Church entity does not affect its legal personality or affect any right, entitlement, liability, exemption or benefit that the entity would have had or enjoyed apart from the change of name.

Clause 31 provides that a change of name of an incorporated Church entity does not affect any existing legal relationships, and gives specific examples.

Clause 32 states that if an incorporated Church entity changes its name under this Division, and an interest in land was registered in the name of the entity before the name change, no fee is payable for recording the change of name for the interest in the land.

Division 2—Dissolution of incorporated Church entities

Clause 33 states that either a Bishop, or the Corporation of the Bishops, may ask the chief executive to dissolve an incorporated Church entity, but the request may only be made if dissolution of the entity accords with the Code of Canon Law. The clause sets out what must be included in the request and the documents which must accompany it.

Clause 34 provides that the chief executive may, on receiving a request for dissolution, by Gazette notice dissolve the incorporated Church entity and vest the assets and liabilities in the successor entity.

Clause 35 provides that if an incorporated Church entity is dissolved under this Division and an interest in land which was vested in that entity vests in the successor entity, then no fee is payable for recording the vesting of the interest in the land in the successor entity.

PART 7—RECORDS THAT MUST BE KEPT

Clause 36 states that the chief executive must keep a register showing the names of incorporated Church entities and the chief executive must also keep other documents particularised in the clause. These documents must be available for inspection by members of the public without fee.

Clause 37 specifies the documents which must be kept by the Corporation of the Bishops. These documents must be available for inspection by members of the public without fee.

PART 8—MISCELLANEOUS

Clause 38 allows for a certificate to be issued by the Corporation of the Bishops regarding the address of an incorporated Church entity shown in the register.

Clause 39 states that a document which legally may be given or served on an incorporated Church entity may, if the entity is the Corporation of the Bishops, be given or served at its address in Brisbane last notified in the Gazette or, in any other case, at the entity's address shown in the register kept under section 37.

Clause 40 states that an incorporated Church entity is an exempt body for the purposes of the Corporations Law of Queensland.

Clause 41 allows for a Bishop or the Corporation of the Bishops to apply to the chief executive for a replacement certificate of incorporation for an incorporated Church entity if the Bishop or the Corporation of the Bishops is satisfied that the certificate of incorporation is lost or destroyed.

Clause 42 allows the chief executive to delegate the chief executive's powers under the Act to an officer of the department.

Clause 43 states that the Governor in Council may make regulations under the Act. A regulation may exempt an incorporated Church entity from the provisions of another Act and may be made subject to conditions.