



ANNO DECIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1968

No. 59 of 1968

An Act to vary a certain deed of trust relating to The Parkin Congregational Mission of South Australia Incorporated ; to repeal The Parkin Congregational Mission of South Australia Act, 1961 ; and for other purposes.

[Assented to 19th December, 1968.]

Preamble.

WHEREAS by an Indenture (hereinafter called "the Deed of Settlement") made the fourteenth day of September, 1887, between William Parkin therein described of the one part and Francis William Cox therein described of the other part, it was witnessed that the said William Parkin did grant sell and release unto the said Francis William Cox and his heirs certain property upon trust to be conveyed unto The Parkin Congregational Mission of South Australia Incorporated (hereinafter called "The Parkin Mission") and, when so conveyed, to be held to the use of the said William Parkin for his life, and from and after his decease, to the use of The Parkin Mission its successors and assigns for ever, but nevertheless upon the trusts and to the use, and for the ends, intents and purposes therein set out : AND WHEREAS the Deed of Settlement has been amended from time to time pursuant to powers of alteration contained therein, and by The Parkin Congregational Mission of South Australia Act, 1961 : AND WHEREAS it is thought that, in consequence of the growth of ecumenism and for other reasons, a substantial revision of the provisions of the Deed of Settlement should now be made :

BE IT THEREFORE ENACTED by the Governor of the State of South Australia with the advice and consent of the Parliament thereof as follows :—

1. This Act may be cited as “The Parkin Congregational Mission of South Australia Incorporated Act, 1968”. Short title.

2. The Parkin Congregational Mission of South Australia Act, 1961, is repealed. Repeal.

3. In this Act, unless the contrary intention appears— Interpretation.

“the Deed of Settlement” means the Indenture referred to in the preamble to this Act :

“the governors” means the persons holding office as governors pursuant to the Deed of Settlement :

“the Mission” means The Parkin Congregational Mission of South Australia Incorporated.

4. (1) The Deed of Settlement is amended by striking out the recitals and provisions thereof and inserting in lieu thereof the provisions and other contents of the schedule to this Act. Amendment of the Deed of Settlement.

(2) The amendment of the Deed of Settlement by this Act shall not affect the validity of any legal or equitable right or claim vested in, or exercisable or enforceable by, any person against the Mission, or the governors, immediately before the commencement of this Act and any such right or claim may be exercised or enforced in all respects as if this Act had not been enacted.

(3) The trusts of the Deed of Settlement both before and after the commencement of this Act shall be deemed to have been, and to be, valid charitable trusts and those trusts, and any accumulations or dispositions of property made pursuant thereto, shall be deemed to be valid notwithstanding any law to the contrary.

(4) The governors may carry out and complete any transaction commenced by them, and not completed at the commencement of this Act, in all respects as if this Act had not been enacted.

(5) Anything done by the governors before the commencement of this Act that could have been lawfully done pursuant to the Deed of Settlement if this Act had then been in force, shall be deemed to have been done pursuant to, and in accordance with, the Deed of Settlement.

(6) Section 16 of the Acts Interpretation Act, 1915-1957, shall apply to and in respect of the Deed of Settlement in all

respects as if it were an Act of the Parliament of South Australia except to the extent that the application of that section would be inconsistent with the provisions of this Act.

Costs of this Act.

5. The costs and expenses of and incidental to the preparation and promotion of this Act may be paid by the governors out of the funds of the Mission.

THE SCHEDULE.

PART I.

PRELIMINARY.

Arrangement of this deed.

1. The provisions of this deed are arranged as follows :—

- PART I.—PRELIMINARY, clauses 1-2.
- PART II.—ELECTORS, clauses 3-5.
- PART III.—ADMINISTRATION, clauses 6-17.
- PART IV.—INVESTMENT, clause 18.
- PART V.—TRUSTS, clauses 19-23.
- PART VI.—ALTERATION TO THIS DEED, clause 24.
- PART VII.—MISCELLANEOUS, clauses 25-27.

Interpretation.

2. (1) In this deed, unless the contrary intention appears—

- “clerical governor” means a governor who is an ordained minister of the Congregational denomination :
- “this deed” means this deed as the same may be amended from time to time and includes any rules made pursuant to this deed :
- “elector” means a person who is an elector under clause 3 of this deed :
- “the funds of the Mission” means the trust property and income :
- “governor” means a person for the time being holding office as a governor under the provisions of this deed :
- “income” means income derived from the trust property, and includes accumulated income (whether accumulated before or after the commencement of The Parkin Congregational Mission of South Australia Incorporated Act, 1968) and income derived from any such accumulated income but does not include income that becomes part of the *corpus* of the trust property under subclause (2) of clause 22 of this deed :
- “lay governor” means a governor who is a lay person of the Congregational denomination :
- “the Mission” means The Parkin Congregational Mission of South Australia Incorporated :
- “missionary” means a person appointed to be a missionary under the provisions of this deed :
- “the Mission territory” means—
 - (a) the State of South Australia ;
 - (b) the Northern Territory ;
 - and
 - (c) any other area or place that is declared by resolution of the electors made upon the recommendation of the governors to be, for the time being, Mission territory :
- “the secretary” means the secretary to the Mission holding office under this deed :
- “the trust property” means the property (not including income) subject to the trusts of this deed.

(2) The Acts Interpretation Act, 1915-1957, shall apply to and in relation to the interpretation of this deed in all respects as if this deed were an Act of the Parliament of South Australia but section 38 of that Act shall not apply to or in relation to any rules made pursuant to the provisions of this deed.

PART II.

ELECTORS.

3. A person of any one or more of the following descriptions shall be an elector :— **Electors.**

(a) a governor ;

(b) a pastor of a Congregational church in this State that is a member of the Congregational Union of South Australia Incorporated ;

(c) a minister (not being a retired minister) recognized as having full status as such by the Congregational Union of South Australia Incorporated ;

and

(d) a person who is an elector pursuant to The Parkin Trust Incorporated Act, 1926-1967, and the deed of settlement therein referred to.

4. (1) The governors may, at any time, convene a meeting of the electors. **Meeting of electors, how convened.**

(2) The governors shall, upon receipt of a request in writing signed by not fewer than ten electors, convene a meeting of the electors.

(3) The secretary shall, at least fourteen days before the day on which the meeting is to be held, or, if the approval of the electors for an alteration to the provisions of this deed is sought, at least twenty-eight days before the day on which the meeting is to be held, send by prepaid post to each elector of whom the secretary has a record, at his last address of which the secretary has been informed, notice in writing of the time and place of the meeting and of the general nature of the business to be dealt with.

5. (1) Subject to this deed, a decision or resolution carried by a majority of the votes cast at a meeting of the electors shall be, for the purposes of this deed, a valid decision or resolution of the electors. **Decision etc. of electors.**

(2) Each elector present at a meeting of the electors shall be entitled to one vote on every question arising for decision by the electors at that meeting.

(3) Twenty-five electors shall constitute a quorum at a meeting of the electors, and no business shall be transacted unless a quorum is present.

(4) Subject to this deed, a meeting of electors may be adjourned and may otherwise regulate its procedure as it thinks fit.

PART III.

ADMINISTRATION.

6. (1) For the purposes of this deed, there shall be seven governors, of whom three shall be ordained ministers of the Congregational denomination, and four lay persons of the Congregational denomination. **Governors.**

(2) The governors in office immediately before the commencement of The Parkin Congregational Mission of South Australia Incorporated Act, 1968, shall, subject to this deed, continue to hold office as governors under this deed.

(3) The governors shall have and may exercise all the powers and authorities conferred upon them, and shall perform and discharge all the duties and obligations imposed upon them, by this deed.

7. (1) The governors shall in each year, at the time of, or as nearly as practicable to the time of, the annual assembly of the Congregational Union of South Australia Incorporated conduct an election of governors in the manner prescribed by rules made under this deed. **Election of governors.**

(2) Immediately before an election is held—

(a) the office of one clerical governor shall become vacant ;
and

(b) the office of one lay governor shall become vacant or, if the election is that held in 1970, or in a year three years or a multiple of three years thereafter, the offices of two lay governors shall become vacant.

(3) The governors whose offices shall become vacant shall be—

(a) the clerical governor who, of the clerical governors, has been longest in office since being last elected a governor ;

and

(b) the lay governor or governors who, of the lay governors, has or have been longest in office since being last elected a governor or governors.

(4) The governors whose offices become vacant under this clause shall be eligible for re-election.

(5) The electors shall elect governors to fill the offices that become vacant under this clause.

Casual vacancies.

8. (1) The office of a governor shall become vacant if—

(a) he dies ;

(b) he resigns by written notice addressed to the secretary of the Mission ;

(c) he is absent from this State for more than twelve consecutive months without the consent in writing of the majority of the remainder of the governors ;

(d) he becomes bankrupt or compounds with his creditors for less than one hundred cents in the dollar ;

(e) he becomes, in the opinion of the president of the Congregational Union of South Australia Incorporated, incapable by reason of mental or physical illness of further performing the duties and obligations of a governor ;

(f) he ceases to have the status of an active Congregational member of a church ;

(g) he is guilty, in the opinion of the president of the Congregational Union of South Australia Incorporated, of any conduct unbefitting a trustee ;

or

(h) a resolution removing him from office is duly passed at a meeting of the electors.

(2) The governors or the electors may, subject to this deed, elect a governor to fill a vacancy occurring under subclause (1) of this clause, and a governor so elected shall, subject to this deed, remain in office until the office of his predecessor would have become vacant under clause 7 of this deed.

Meeting of governors.

9. (1) The governors may meet together for the dispatch of business at such times and places as they think fit, but shall meet at least once in every quarter of each calendar year.

(2) The governors shall, upon receipt of a notice in writing signed by the secretary requesting a meeting of the governors (which notice the secretary shall give to each governor upon receipt of a request in writing by any governor that a meeting be summoned) meet together at the time and place appointed in the notice for the dispatch of business.

Quorum, etc.

10. (1) Four governors shall constitute a quorum at a meeting of the governors and no business shall be transacted by the governors unless a quorum is present, except that if the number of governors is reduced to fewer than four, the remaining governor or governors may act to appoint governors to the vacant offices, or to summon a meeting of the electors.

(2) Subject to this clause the governors may continue to act notwithstanding any vacancy in the office of a governor.

Election of president and proceedings of governors.

11. (1) The governors shall, at their first meeting after each annual election, elect one of their number to be president until the next annual election of governors.

(2) If the office of president becomes vacant before the election of a president falls due, the governors may elect one of their number to the vacant office until that election falls due.

(3) If the president is absent from a meeting of the governors, the governors present may elect one of their number to be president for that meeting, and a governor so elected shall have the powers and authorities, and shall discharge the duties and obligations of the president at that meeting.

(4) The president shall preside at a meeting of the governors, and shall cause accurate minutes to be taken of the proceedings at any such meeting.

(5) Subject to subclause (7) of this clause, each governor shall be entitled to one vote on any matter arising for decision at a meeting of the governors, and, in addition to a deliberative vote, the president shall, in the event of an equality of votes, be entitled to a second or casting vote.

(6) A decision carried by a majority of the votes cast by the governors present at a meeting of the governors shall be a decision of the governors.

(7) A governor shall not vote on any matter in which he has any personal or pecuniary interest, and shall not, without the consent of the remainder of the governors present at a meeting of the governors, speak on any such matter.

12. (1) The governors may appoint committees consisting of such persons as they think fit to which they may delegate any of their powers or functions under this deed. **Committees.**

(2) A committee so appointed shall be subject to rules made under this deed and shall observe any directions as to the procedure that it is to follow given to it by the governors.

(3) The delegation of any power or function under this clause shall not derogate from the powers of the governors personally to act under this deed in any matter.

13. (1) A resolution in writing to which any five or more of the governors have subscribed their signatures (whether upon a single document, or upon separate documents each embodying the contents of the resolution) shall, subject to this clause, be as valid and effectual as a resolution duly passed at a meeting of the governors. **Resolution.**

(2) The secretary shall serve, personally or by post, a copy of the resolution upon each governor, and if the copy is served by post, it shall, for the purposes of this clause, be deemed to have been received by the governor when it would, in the ordinary course of the post, have reached the address to which it was posted.

(3) If, at the expiration of twenty-four hours from the time of service of the notice upon the governor last served therewith, no governor has given to the secretary notice of his dissent from the resolution, the resolution shall then become and be of full force and effect, but if any governor does give such notice, the resolution shall lapse.

14. (1) The governors may from time to time appoint from amongst their own number or otherwise a person or persons to hold the offices of secretary and treasurer to the Mission, and such other officers and servants as the governors deem necessary. **Appointment of officers and servants.**

(2) A person so appointed shall be entitled to receive such remunerations, allowances and expenses (if any) to be paid out of income as the governors think fit.

15. A governor shall be entitled to be paid out of income, for each meeting of the governors attended by him, a sum that is, in the opinion of the governors, as nearly as possible equal or equivalent in value to the sum of ten shillings and sixpence on the thirtieth day of June, 1926, but a governor shall not be entitled to be paid more than twelve such sums in any one year. **Remuneration of governors.**

16. (1) The governors shall, as soon as practicable after the end of each financial year, submit to the Council of the Congregational Union of South Australia Incorporated a report on their proceedings during that financial year, and a financial statement showing accurately and in detail the trust property as at the end of that financial year, and the income and expenditure of the Mission during that financial year. **Report and balance sheet.**

(2) The balance sheet shall be duly audited by an auditor appointed by the Council of the Congregational Union of South Australia Incorporated.

(3) The auditor's remuneration shall be fixed by the governors and paid out of income.

(4) The report and balance sheet shall be printed and presented to the next following assembly of the Congregational Union of South Australia Incorporated.

(5) For the purposes of this clause, a financial year shall be a period fixed by rules made under this deed.

17. (1) The governors shall provide for the safe custody of the common seal of the Mission. **Common seal.**

(2) The common seal shall not be used except by authority of a resolution of the governors, or of a committee of governors to whom authority to use the common seal has been delegated.

(3) The affixation of the common seal to any document shall be attested by the signatures of two governors or of one governor and a person nominated by the governors for the purpose.

PART IV.

INVESTMENT.

Investment.

18. (1) The governors may invest the funds of the Mission in any one or more of the following investments :—

- (a) investments in which trust funds may properly be invested under the law of the United Kingdom, the Commonwealth of Australia or any State or Territory thereof ;
- (b) investments the repayment of which is guaranteed by the Government of the United Kingdom, the Commonwealth of Australia, or any State or Territory thereof ;
- (c) securities given by the local governing corporation or body of the capital city of the Commonwealth of Australia, or of any State or Territory thereof ;
- (d) secured or unsecured debentures or other securities, or shares or other interests, in a company listed on one or more of the Stock Exchanges in the Commonwealth of Australia which company carries on business in the Commonwealth of Australia with limited liability, and has, in each of five consecutive years preceding the date of the investment, paid a dividend of not less than five per centum on its ordinary shares.

(2) The governors may at any time realize any investment of the funds of the Mission, and re-invest the moneys in accordance with this clause.

PART V.

TRUSTS.

Annuities to widows.

19. (1) The governors shall, for the purposes of this deed, nominate twenty widows who—

- (a) subscribe to and practise the Christian religion ;
- and
- (b) are in indigent circumstances,

and shall, on or about Christmas Day in each year, pay out of income to each of them an annuity of not less than twenty dollars.

(2) In deciding to whom an annuity should be paid under subclause (1) of this clause, the governors shall give preference to widows of the Congregational denomination who have attained the age of sixty years.

(3) The governors shall pay an annuity to a widow nominated under subclause (1) of this clause during her widowhood unless, in the opinion of the governors, she has been guilty of any dishonest or dishonourable conduct, or is no longer in need of the annuity.

(4) The widows appointed to receive an annuity under this deed, and who had not ceased to be entitled to receive that annuity immediately before the commencement of The Parkin Congregational Mission of South Australia Incorporated Act, 1968, shall be deemed to have been nominated under this clause.

Application of income.

20. (1) Subject to subclause (3) of this clause, the governors may, after making the payments necessary for the purposes of other provisions of this deed, apply all or any of the remainder of the income towards the advancement of the Christian religion in the Mission territory, and, without limiting the generality of the foregoing but subject thereto, for all or any of the following purposes :—

- (a) the payment of remuneration, allowances and expenses to missionaries ;
- (b) the payment of any grant for religious or other charitable purposes to any body, whether corporate or unincorporate, upon such terms and conditions as the governors think fit ;

- (c) the provision, upon such terms as the governors think fit, of houses, offices and other buildings for the use of any governor or missionary, or any full time officer or servant of the Mission, or for any religious or other charitable purpose ;
 - (d) the payment of all rates, taxes and insurance, the costs of maintenance and repair, and the other outgoings, in respect of any such houses, offices or other buildings ;
 - (e) the payment of expenses, or allowances in respect of expenses, incurred or to be incurred by any governor or missionary, the secretary or treasurer, or any other officer or servant of the Mission ;
 - (f) the provision of all equipment (including motor vehicles) necessary or desirable, in the opinion of the governors, for the work of the Mission ;
 - (g) the making of loans for any religious or other charitable purpose to any person or body, whether corporate or unincorporate, upon such terms as the security (if any) to be given, and the interest (if any) to be paid, as the governors think fit ;
- and
- (h) the payment of all expenses of, and incidental to, the administration of the Mission.

(2) The ownership of property purchased by the governors under subclause (1) of this clause may be vested in the Mission, or in such other persons as the governors think fit.

(3) The moneys expended by the governors under subclause (1) of this clause shall be applied to the furtherance of work that is, in the opinion of the governors, for the furtherance of the interests of the Congregational denomination.

21. The receipt of the secretary or other proper officer of any body whether corporate or unincorporate to which a payment is made by the governors under this deed, shall be a sufficient discharge to the governors, and they shall not be bound to see to the application thereof. Discharge for governors.

22. (1) The governors may, in their discretion, accumulate any income not immediately required for the purposes of the Mission and this deed. Accumulation.

(2) The governors may from time to time declare that any income shall form part of the *corpus* of the trust property, and thereupon that income shall become and be part of the *corpus* of the trust property.

23. (1) The governors shall from time to time appoint missionaries and fix the terms and conditions (including the duties to be performed by them, and the place or sphere in which those duties are to be performed) of their employment. Missionaries.

(2) The powers of the governors under subclause (1) of this clause may be exercised in conjunction with any other person or body upon such terms and conditions as the governors think fit, and agree upon with that person or body.

(3) A missionary may be appointed to carry out any one or more of the following functions :—

- (a) preaching ;
- (b) chaplaincy ;
- (c) pastoral care ;
- (d) counselling ;
- (e) teaching ;
- (f) social work ;

and

(g) any other function determined by the governors.

PART VI

ALTERATION TO THIS DEED

Alteration.

24. (1) The governors may, from time to time, by instrument in writing under the seal of the Mission, and with the approval of not less than three quarters of the electors present and voting at a meeting of the electors, duly convened for the purpose, alter all, or any, of the provisions of this deed, and may, in the instrument, fix the time at which the alteration shall come into force.

(2) The provisions of this deed may be altered in any manner whatsoever under sub-clause (1) of this clause except that no alteration shall be made—

(a) altering the character of the Mission as a religious and charitable institution ;

(b) authorizing the application of income except—

(i) for the purpose of providing annuities for widows who subscribe to and practise the Christian religion, and are in indigent circumstances ;

or

(ii) for the advancement of the Christian religion, or purposes incidental thereto ;

or

(c) authorizing the application of the trust property except for purposes of, and incidental to, the investment, re-investment, realization and management thereof.

(3) In this clause "alter" means alter by any means whatsoever, whether by addition, revocation or substitution, and "alteration" has a corresponding meaning.

(4) The secretary shall send to the Council of the Congregational Union of South Australia Incorporated, a copy of all alterations made under this clause.

PART VII.

MISCELLANEOUS.

Rules.

25. (1) The governors may, by instrument in writing under the seal of the Mission, make such rules as they deem necessary or expedient for the purposes of this deed, and, without limiting the generality of the foregoing, rules with respect to—

(a) the meeting of electors and the procedure to be followed thereat ;

(b) any matter relating to the nomination or election of governors ;

(c) the period that shall constitute a financial year for the purposes of clause 16 of this deed ;

and

(d) the terms and conditions upon which missionaries are to be employed, by whom their work is to be supervised, and the manner of their appointment, suspension or dismissal.

(2) The secretary shall, at the request of an elector, produce for his inspection a copy of the rules.

(3) The secretary shall send to the Council of the Congregational Union of South Australia Incorporated a copy of all rules made under this clause.

(4) The electors may, at a meeting duly convened for the purpose within three months of the making of any rules, disallow the rules, and the rules shall thereupon cease to have any effect, but such disallowance shall not affect the validity of an act done pursuant to the rules prior to disallowance.

26. For the purposes of this deed, the governors—

General powers
of governors.

- (a) shall be capable of acquiring, taking or letting on lease or hire, holding, selling and otherwise disposing of, property of all kinds ;
and
(b) shall have all the powers conferred upon trustees by the Trustee Act, 1936-1967, or otherwise according to law, so far as is not inconsistent with the provisions of this deed.

27. No error or omission on the part of the secretary or other person in convening a meeting or non-receipt of any notice or other document by any person, or irregularity or want of form in any matter shall vitiate or avoid the validity of anything done pursuant to this deed.

Error or
omission by
secretary, etc.

In the name and on behalf of Her Majesty, I hereby
assent to this Bill.

J. W. HARRISON, Governor.