



Section 10 – Variation of Trust

FAQ's

This is a summary of the regulations for the Variation of Trusts as per The Code section C2.9. It is intended only as a guide and the full regulation should be read carefully to obtain the detailed information necessary to complete all requirements.

What is it a Variation of Trust?

A “Variation of Trust” which is sometimes called a “Section 10” is a process which the General Assembly of the Presbyterian Church of Australia in New South Wales can undertake to change the Trust purposes for which an asset is held. Section 10 refers to the section in The Presbyterian Church (New South Wales) Property Trust 1936 Act (or “the Act”) which deals with Variations of Trust.

What is a Trust?

A Trust refers to the purpose for which an asset is held. An asset might be a building or property, or it may be money in the bank, or funds which have been given to the Church in a bequest. In the Presbyterian Church of Australia in New South Wales, all assets of the Church are held in Trust for the beneficial ownership of a particular Congregation or Church body, and sometimes for a particular purpose. *For example, the Byron Bay Presbyterian Church, the manse, any funds which they might hold, and any other assets are held in Trust for the Byron Bay Presbyterian Church Congregation.*

What is the definition of a Congregation?

Importantly, assets are held in Trust for a particular **Congregation** - not a Preaching Place, Pastoral Charge, or Home Mission Station (although a Pastoral Charge or Home Mission Station may consist of one or more congregations and a Congregation may consist of various Preaching Places).

Congregation, Pastoral Charge and Home Mission Station are defined in the Code as follows:

1.01. Congregation. A congregation is a company of persons, including children, associated in a particular place for Christian worship, instruction, fellowship and work, and which congregation is sanctioned by the presbytery.

1.02. Pastoral charge. A pastoral charge which may consist of one or more congregations is a sphere of pastoral duty to which a minister or ministers may be inducted by a presbytery.

1.03. Home Mission Station. A home mission station which may consist of one or more congregations is a sphere of pastoral duty to which a minister or missionary may be appointed by the committee on Ministry and Mission.

Why do we perform a Variation of Trust?

A Variation of Trust may be required when the Trust (or purpose for an asset) can no longer be upheld or honoured. For example:

- A congregation closes
- A congregation merges with another congregation
- Unused congregational property is declared redundant church property
- A ministry ceases
- A particular purpose fund can no longer fulfil its purpose

The assets of a congregation (even one that is closed or amalgamated) continue to be held for the original Trust purpose until such a time that the Trust purposes are varied so that the assets are held for a different purpose. That new Trust purpose needs to be as close as possible to the original Trust.

For example, a Variation of Trust enables the Trust's purpose to be amended so that the asset can be transferred to another congregation (in the case of a congregation being closed), or to the merged congregation (in the case of an amalgamation).

Has a Trust become Impossible or Inexpedient?

When undertaking the Variation of Trust Process, the General Assembly needs to be convinced that the existing Trusts for which the assets are being held are either **Impossible** or **Inexpedient** to be upheld.

For example, it might be impossible to continue to hold the assets for a congregation due to the fact that the congregation has closed, or has amalgamated with another congregation to create a new congregation.

Another example may be that it is impossible or inexpedient to continue to honour the Trust purposes of a particular purpose fund of a congregation (e.g. the Rose Garden Fund because there are no longer roses being grown there.)

Who is involved?

A number of different parties from around the Church are involved in a Variation of Trust, including:

- The Presbytery
- The Ministry and Mission Committee (M&M)
- The Trustees
- The General Assembly

What Steps are Required to Perform a Variation of Trust?

The process to perform a Variation of Trust is stipulated in Section 10 of the Act, and also in The Code, Section C2.9, and are summarised below:

1. a) Congregation closed -
If the property of a congregation *ceases to be used* by that congregation for at least 4 months;
and
It is unlikely that the congregation will *resume regular use* of that property; then

The Committee of Management and/or the Presbytery shall submit a report to the Trustees which covers the following points –

- *A declaration that the property has become inactive;*
- *Whether there are any plans for future use of the property; and*
- *Whether the Presbytery sees the property as part of any future ministry activity.*

On receipt of this report the Trustees may declare the inactive property to be *redundant church property*.

or

- b) Amalgamation of congregations -

The Presbytery passes a resolution to amalgamate the congregations and inform the Trustees that the amalgamation has taken place. The Presbytery will request the Trustees to amalgamate the trust purposes of the assets of the two congregations into trust purposes for the newly amalgamated congregation.

or

c) Particular purpose fund no longer possible or suitable –

The Presbytery and/or relevant Committee passes a resolution stating it is impossible or inexpedient to uphold the Trust purposes of the particular purpose fund and inform the Trustees accordingly.

2. The Presbytery then prepares a report on the relevant assets, explaining the reasons for the closure/amalgamation of a congregation, or need to vary the purpose for a particular asset. If the congregation has closed, then the Presbytery will express their recommendation for who the new beneficial owner of the assets should be.
3. The M&M Committee prepares a report with their recommendations of the most suitable new beneficiary of the assets. (This may be a specific congregation and/or the Parish Development Fund (PDF), which is a pool of funds held for the support and financing of congregations which M&M deem a priority, or who are needy of funds.)

The process works best if both the Presbytery and the M&M Committee are in open discussion during steps 2 and 3. Oftentimes, a percentage of the assets are delegated to a new beneficiary congregation in the Presbytery, and the remaining percentage is delegated to the Parish Development Fund.

4. The reports are sent to the Trustees, who write the Variation of Trust wording into their papers which are submitted to the General Assembly for consideration. (Ideally the Presbytery and M&M's reports are sent to the Trustees by April each year, so that the wording of the Variation of Trust can be prepared in time for that year's General Assembly.)
5. The General Assembly (conducted each July) receive the report of the Trustees, and approve the Variation of Trust. At the rising of that sederunt of the General Assembly, the assets are then held for the new beneficial owners.