

Methodist Church of New Zealand Trusts Bill

Private Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Methodist Church of New Zealand Trusts Bill and recommends that it be passed with the amendments shown.

Introduction

The Methodist Church of New Zealand Trusts Bill provides the Methodist Church with an alternative mechanism to that under the Charitable Trusts Act 1957 for varying certain charitable trusts associated with the Church. This mechanism would allow the Church to make changes to its trusts in a much more straightforward and cost-effective way.

The bill also expands the purposes for which trust funds and trust properties relating to Methodist orphanages or Methodist children's homes can be applied. This change would allow the Church to apply these funds and properties to provide care for children and young

persons by means other than orphanages and children's homes, so as to reflect recent changes in law and current social policy.

Pursuant to Standing Orders we have considered the preamble and consider that the statements in it have been proved to our satisfaction. We acknowledge that the proposals to provide an alternative approach as set out in the bill could not be achieved other than by legislation.

We note that several Private Acts of Parliament, such as the Anglican Trusts Act 1981, the Roman Catholic Bishops Empowering Act 1997, and the Presbyterian Church Property Amendment Act 1996, achieve objects similar to those of this bill for the Churches that promoted them.

Definition of “trust property”

We recommend amending the definition of “trust property” in clause 5 to make it clear that only property held in trust on behalf of the Church or any part of it would be trust property. This amendment would clarify which trusts would be covered by the bill.

Notice to Attorney-General

We recommend amending clause 12(1) to clarify that all schemes prepared under Part 2 of the bill must be sent to the Attorney-General for consideration. Part 2 of the bill applies to all Church trusts, and establishes a mechanism to vary such trusts through a different process from that under the Charitable Trusts Act, with oversight of the variations by the Attorney-General. The bill as introduced specifies in clause 12 that “trusts for charitable purposes” would be referred to the Attorney-General. We consider that such specificity might unintentionally exclude some Church trusts, or might cause unnecessary uncertainty as to which schemes should have oversight by the Attorney-General. Our recommended amendment makes it clear that all schemes prepared under Part 2 (relating to any Church trust) would have such oversight, removing any possible uncertainty.

Orphanages or children's trusts

We recommend amending clause 18(1) to clarify that the trust funds and properties to which Part 3 of the bill applies (the charitable trust

funds and trust properties held for Methodist orphanages or children's homes in New Zealand, or for the care, welfare, or benefit of the persons cared for in such places) could be used only for charitable purposes. This amendment would remove any doubt as to whether the funds could be held or applied for non-charitable purposes, and accords with the way the funds must be held and applied currently.

Appointment and removal of trustees

We recommend the removal of clause 21 and the insertion of new clause 19A to provide that the trustees can be appointed or removed only after consultation with the trustees. In the bill as introduced, clause 21 confers an unrestrained power to appoint or remove trustees on the Annual Conference of the Methodist Church. We consider that such an unfettered power could have undesirable consequences and set an unwelcome precedent.

We understand that the power in clause 21 as introduced was based on section 20 of the Anglican Church Trusts Act. However, we note that neither the Presbyterian Church Property Amendment Act nor the Roman Catholic Bishops Empowering Act contains an equivalent unlimited power to appoint and remove trustees.

We consider the provisions of the Roman Catholic Bishops Empowering Act to be more in line with general trust principles, and therefore we recommend amendments to follow its provisions more closely.

Appendix

Committee process

The Methodist Church of New Zealand Trusts Bill was referred to us on 6 May 2009. The closing date for submissions was 12 August 2009. We invited submissions from those listed as interested parties in the petition for the bill, and received and considered submissions from three interested groups and individuals, including the promoter. We received advice from the Ministry of Justice.

Committee membership

Craig Foss (Chairperson)

Amy Adams

David Bennett

John Boscawen

Brendon Burns

Charles Chauvel (from 14 October 2009)

Hon David Cunliffe

Aaron Gilmore (from 24 June 2009)

Raymond Huo (until 14 October 2009)

Rahui Katene

Peseta Sam Lotu-Iiga

Stuart Nash

Dr Russel Norman

Chris Tremain (until 24 June 2009)

Methodist Church of New Zealand
Trusts Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Brendon Burns

Methodist Church of New Zealand Trusts Bill

Private Bill

Contents

	Page
Preamble	2
1 Title	3
2 Commencement	3
Part 1	
Preliminary provisions	
3 Purpose	3
4 Interpretation	3
Part 2	
Variation of Church trusts	
5 Meaning of trust property	4
6 Part additional to provisions of Charitable Trusts Act 1957	5
7 Scheme for application or disposal of trust property	5
8 Preparation of scheme for application or disposal of charitable trust property	5
9 Submission of scheme to committee or legal adviser	6
10 Statement giving full information	6
11 Notice of scheme	6
12 Notice to Attorney-General of scheme prepared under this Part	7
13 Committee or legal adviser must provide copies of objections and representations	8
14 Committee or legal adviser must have regard to objections and representations by Attorney-General	8

		Methodist Church of New Zealand Trusts Bill	
Preamble			
15	Consideration by committee or legal adviser of scheme and any objections or representations		8
16	Conference may approve scheme		9
Part 3			
Trusts for orphanages and children's homes			
17	Application		9
18	Orphanage or children's trusts		9
19	Power to transfer trust funds and trust properties		10
19A	Appointment and removal of trustees		10
20	Power to act together with other persons		11
Part 4			
Miscellaneous provisions			
22	Protection of purchasers and others		11
23	Costs and charges		11

Preamble

- (1) The Methodist Church of New Zealand holds real and personal property on trust for—
 - (a) objects or purposes directly or indirectly associated with or relating to the Methodist Church; or
 - (b) furthering social services, hospital or residential care, or educational needs directly or indirectly associated with the Methodist Church: 5
- (2) The Methodist Church of New Zealand also holds trust funds for—
 - (a) the purposes of Methodist orphanages or Methodist children's homes in New Zealand; and 10
 - (b) the care, welfare, or benefit of persons being cared for, or formerly cared for, in those orphanages or children's homes:
- (3) The Methodist Church of New Zealand wishes— 15
 - (a) to have an alternative process, to that under the Charitable Trusts Act 1957, to vary the trusts referred to in **paragraph (1)**; and
 - (b) to have the objects or purposes of the trusts referred to in **paragraph (2)** widened to take account of changes 20

in policy and law relating to the care of children and young persons:

- (4) The objects of this Act cannot be achieved without legislation:

The Parliament of New Zealand therefore enacts as follows:

- 1 Title** 5
This Act is the Methodist Church of New Zealand Trusts Act **2009**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 10
- Part 1**
Preliminary provisions
- 3 Purpose**
The purpose of this Act is to—
(a) provide an alternative process, to that under the Charitable Trusts Act 1957, to vary certain trusts relating to the Methodist Church; and 15
(b) widen the objects or purposes of trust funds and trust properties relating to Methodist orphanages or Methodist children’s homes. 20
- 4 Interpretation**
In this Act, unless the context otherwise requires,—
Board means the Methodist General Purposes Trust Board incorporated under the Charitable Trusts Act 1957
Church or **Methodist Church** means the Methodist Church of New Zealand recognised as an independent Conference under the Methodist Church of New Zealand Act 1911 25
Conference means the Annual Conference of the Methodist Church
General Secretary means the executive officer of the Board of Administration of the Methodist Church 30

laws and regulations means the law and regulations of the Methodist Church

legal adviser means a barrister and solicitor of the High Court of New Zealand in active practice

President— 5

- (a) means the President of the Methodist Church; and
- (b) includes any person or persons authorised by the Conference to perform and carry out the duties of the President

President’s legal adviser means the legal adviser to the President appointed by the Conference each year under the laws and regulations 10

property—

- (a) means every type of property; and
- (b) includes— 15
 - (i) every type of estate and interest in property; and
 - (ii) money

Tumuaki means the person appointed to the Hui Poari to lead the tangata whenua, Te Taha Māori within the Methodist Church. 20

Part 2 Variation of Church trusts

5 Meaning of trust property

In this Part, unless the context otherwise requires, **trust property** means any property held on trust on behalf of the Church or any part of the Church for either or both of the following types of objects or purposes (whether or not the property is invested pending its application for an object or purpose): 25

- (a) an object or purpose directly or indirectly associated with or relating to the Church or the whole or any part of any synod, parish, rohe, connexional division, mission, board, committee, congregation, association, or group of the Church; or 30
- (b) an object or purpose of promoting and furthering social services, hospital or residential care, care for the elderly, or educational needs directly or indirectly associated with or relating to the Church. 35

6 Part additional to provisions of Charitable Trusts Act 1957

- (1) The provisions of this Part are in addition to the provisions of the Charitable Trusts Act 1957 so that a trust that may be varied under that Act can be varied under this Part. 5
- (2) However, this Part does not apply to trust property in respect of which, before or after this Act comes into force,—
- (a) a scheme has been approved by the High Court or the Attorney-General under Part 3 or 4 of the Charitable Trusts Act 1957; or 10
 - (b) an application has been made for such approval and has not been withdrawn.

7 Scheme for application or disposal of trust property

- (1) This section applies if—
- (a) it is impossible, impracticable, or inexpedient to carry out the object or purpose of the trust on which any trust property is held; or 15
 - (b) the amount of any trust property available is inadequate to carry out the object or purpose of the trust on which the trust property is held; or 20
 - (c) the object or purpose for which any trust property is held has already been carried out.
- (2) The trustee of the trust property may prepare, or cause to be prepared, a written scheme for the application or disposal of the trust property for some other charitable object or charitable purpose or combination of charitable objects or charitable purposes of a kind specified in the definition of a trust property in **section 5**. 25

8 Preparation of scheme for application or disposal of charitable trust property 30

- If a scheme prepared under **section 7** relates to trust property that is held for a charitable purpose within the meaning of Part 3 of the Charitable Trusts Act 1957,—
- (a) the scheme must provide for the application or disposal of the trust property for an object or purpose of a kind specified in the definition of trust property in **section 5**; and 35

- (b) the trustee of the trust property in preparing the scheme, the committee or legal adviser (authorised or appointed under **section 9**) in considering and reporting on the scheme, and the Conference in deciding whether to approve the scheme, must act in accordance with the rules of law that would be applied by the High Court on application made to it under Part 3 of the Charitable Trusts Act 1957 if the scheme were submitted to the High Court under that Part of that Act. 5
- 9 Submission of scheme to committee or legal adviser** 10
- (1) A trustee must submit a scheme prepared under **section 7** to—
- (a) a committee authorised by the Conference to consider schemes under this Part; or
- (b) a legal adviser appointed by the Conference. 15
- (2) The committee referred to in **subsection (1)(a)** must comprise—
- (a) the President; and
- (b) the immediate past President; and
- (c) the General Secretary; and 20
- (d) the President’s legal adviser; and
- (e) the Tumuaki.
- 10 Statement giving full information**
- A scheme submitted under **section 9** must be accompanied by— 25
- (a) a statement giving full information about the reasons for the proposed application or proposed disposal of the trust property; and
- (b) a copy of the trust instrument (if any).
- 11 Notice of scheme** 30
- (1) As soon as practicable after receiving the scheme, the committee or legal adviser to whom it is submitted must advise the trustee as to—
- (a) the persons, bodies, or organisations (if any) to whom written notice of the scheme must be given; and 35

- (b) the manner (if any) in which public notice of the scheme must be given.
- (2) Notice of the scheme must be given by the trustee in accordance with the advice of the committee or legal adviser.
- (3) A notice under **subsection (1)(a)** must— 5
 - (a) be accompanied by a copy of the scheme and the statement and trust instrument (if any) referred to in **section 10**; and
 - (b) state that the person, body, or organisation to whom the notice is given may, within 60 days after the receipt or publication of the notice, make written objections to, or make written representations concerning, the scheme to the committee or legal adviser; and 10
 - (c) specify an address to which any written objections or representations may be sent. 15
- (4) A notice under **subsection (1)(b)** must—
 - (a) specify where a copy of the scheme and the statement and trust instrument (if any) referred to in **section 10** are available for inspection; and
 - (b) state that any person, body, or organisation may, within 60 days after the receipt or publication of the notice, make written objections to, or make written representations concerning, the scheme to the committee or legal adviser; and 20
 - (c) specify an address to which any written objections or representations may be sent. 25

12 Notice to Attorney-General if trust for charitable purposes of scheme prepared under this Part

- (1) If the scheme relates to trust property that is held for a charitable purpose within the meaning of Part 3 of the Charitable Trusts Act 1957 a scheme is prepared under this Part, the committee or legal adviser must send to the Attorney-General— 30
 - (a) written notice of the scheme; and
 - (b) copies of the statement and trust instrument (if any) referred to in **section 10**. 35
- (2) The Attorney-General may, within 90 days after receipt of the notice, make written objections to, or make written representations concerning, the scheme to the committee or legal adviser.

13 Committee or legal adviser must provide copies of objections and representations

The committee or legal adviser must provide to the trustee copies of any written objections and any written representations received by the committee or legal adviser within the period specified in **section 11(3)(b) or (4)(b) or section 12(2)**. 5

14 Committee or legal adviser must have regard to objections and representations by Attorney-General

- (1) The committee or legal adviser must have regard to any written objections and any written representations made by the Attorney-General within the period specified in **section 12(2)**. 10
- (2) If the Attorney-General objects to the scheme on the ground that the scheme is not one that should be approved by the High Court under Part 3 of the Charitable Trusts Act 1957, the Conference must not approve the scheme. 15

15 Consideration by committee or legal adviser of scheme and any objections or representations

- (1) The committee or legal adviser—
- (a) must consider the scheme and any written objections and any written representations received by the committee or legal adviser within the period specified in **section 11(3)(b) or (4)(b) or section 12(2)**; and 20
 - (b) may remit the scheme to the trustee of the trust property for consideration of and agreement to any changes recommended by the committee or legal adviser. 25
- (2) The committee or legal adviser must—
- (a) prepare a report on the scheme with any amendments that the trustee of the trust property agrees to; and
 - (b) submit to the Conference— 30
 - (i) the report prepared under **paragraph (a)**; and
 - (ii) the scheme; and
 - (iii) any objections or representations made in relation to the scheme.

16 Conference may approve scheme

- (1) After considering the report, scheme, and any submissions or representations submitted to it under **section 15(2)(b)**, the Conference may approve the scheme.
- (2) A scheme approved by the Conference has effect according to its tenor despite the terms of the instrument that created the trust. 5
- (3) This section applies subject to **section 14(2)**.

Part 3
Trusts for orphanages and children's homes 10

17 Application

- (1) This Part applies in relation to all charitable trust funds and trust properties that, on or after the commencement of this Act, are vested in trustees— 15
 - (a) for the purposes of Methodist orphanages or Methodist children's homes in New Zealand; or
 - (b) for the care, welfare, or benefit of persons being cared for, or formerly cared for, in Methodist orphanages or Methodist children's homes in New Zealand. 20
- (2) However, this Part does not apply in relation to a trust fund or property that has no general charitable intention.

18 Orphanage or children's trusts

- (1) Every trust fund and trust property to which this Part applies is to be held for charitable purposes relating to the welfare of children in New Zealand. 25
- (2) However, if any trust fund or trust property to which this Part applies is held for the purposes of, or in connection with, a specific Methodist orphanage or Methodist children's home, **subsection (1)** applies in relation to the trust fund or trust property only if it is impossible, impracticable, or inexpedient to give effect to those purposes. 30
- (3) This section applies despite the terms on which a trust fund or trust property is held.

- 19 Power to transfer trust funds and trust properties**
- (1) A trustee of trust funds or trust properties to which this Part applies may pay or transfer the whole or any part of the funds or properties to the Board to be held by the Board as trustee.
- (2) The Board may apply the funds or property as if the funds or property were funds or property held under **section 18**. 5
- (3) **Subsection (2)** applies even though the powers of application conferred by this Act in relation to the funds or property are wider than the powers conferred by any instrument creating the trust. 10
- (4) The Board may invest and amalgamate funds transferred to it under **subsection (1)** with other trust funds held by the Board and to which this Part applies.
- (5) On and from the payment or transfer of funds or properties to the Board under this section— 15
- (a) the trustee making the transfer or payment is not liable for the proper application of the capital or income of the funds or properties; but
- (b) the Board is liable for the proper application and administration of the capital and income of the funds or properties— 20
- (i) in accordance with the instruments creating the trusts; but
- (ii) subject to the modifications made to the trusts by this Act. 25

19A Appointment and removal of trustees

- (1) The Conference (or any board, society, or person authorised by it under the laws and regulations) may appoint and remove trustees of any trust funds or trust properties to which this Part applies. 30
- (2) The Conference may not exercise the power under **subsection (1)** unless the trustees concerned have first been consulted about the proposed appointment or removal of trustees.
- (3) This section applies only if the Conference would not otherwise have the power to appoint and remove the trustees. 35

- 20 Power to act together with other persons**
The Board may, for the purposes of **section 18 or 19**, join or act in association with any other persons or bodies of persons in doing any act or thing which, in the opinion of the Board, will be for the welfare of children in New Zealand. 5

Part 4

Miscellaneous provisions

- 21 Appointment and removal of trustees**
The Conference (or any board, society, or person authorised by it under the laws and regulations) may appoint and remove trustees of any property held for any religious, charitable, educational, or other purposes in connection with the Church. 10
- 22 Protection of purchasers and others**
A purchaser, vendor, mortgagee, lessee, or other person to or with whom any sale, exchange, mortgage, or lease is made under this Act is not under a duty to inquire— 15
- (a) whether any trustee or authorised trust board has authority or power to enter into the transaction; or
 - (b) whether the transaction is consistent with the trusts on which the property is held; or 20
 - (c) whether any authority required by this Act to be given has been duly given; or
 - (d) otherwise as to the propriety or regularity of the transaction; or
 - (e) as to the application of any money received by the trustee or authorised trust board on the transaction. 25
- 23 Costs and charges**
The costs, charges, disbursements, and expenses of preparing, promoting, and passing this Act may be paid by the Board out of income from the trust funds or trust properties transferred to it under **Part 3**. 30
-

**Methodist Church of New Zealand
Trusts Bill**

Legislative history

24 April 2009
6 May 2009

Introduction (Bill 29–1)
First reading and referral to Finance and
Expenditure Committee
