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Digest No. 1683

Methodist Church of New Zealand Trusts Bill 2009 (Private Bill)

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| Date of Introduction: | 28 April 2009 |
| Member: | Brendon Burns |
| Select Committee: | As at 04 May, 1st Reading not held. |
| Published: 04 may 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250 | Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill. |

Purpose

The main aims of this Bill are to:

- to provide an appropriate mechanism for varying charitable trusts of the Methodist Church " ... where the original objects or purposes are now impossible, impracticable, or inexpedient to carry out and by reason of the limited assets of those trusts, or reasons of expense, it is desirable to provide an additional means of varying those trusts other than the means provided by the Charitable Trusts Act 1957"; and
- "to expand the purposes for which trustees hold trust funds or trust property for the purposes of Methodist orphanages or children's homes due to changes in policy and law relating to the care of children and young persons"¹.

¹ Methodist Church of New Zealand Trusts Bill, 2009 No 29-1, Explanatory note, General policy statement, p. 2.

Background

Methodism

Methodism had its origins in the teaching of John Wesley (1703-1791), originally a clergyman of the Church of England. "The name "Methodist" was given in derision to those Oxford students who in company with John Wesley and his brother Charles used to meet together for spiritual fellowship. The name was accepted by the Wesleys and their followers and became their official name. Methodism did not differ in doctrinal fundamentals from the doctrines of the Anglican church but was a revival of personal religion and aimed to "spread scriptural holiness over the land". John Wesley and his followers, finding Anglican churches closed against them, took to preaching in the open air and as their number increased they started to hold their own Sunday services. This let them appoint their own clergy who were usually part-time and were otherwise employed in regular jobs².

The first Methodist missionaries to Maori arrived in New Zealand in 1822. In 1913 the various Methodist bodies (the Wesleyans, Primitive Methodists, Free Methodists, and Bible Christians) all joined together to form the Methodist Church of New Zealand. In 1874 the first separate Methodist Conference was held in New Zealand, although every three years until 1913 New Zealand Methodism shared in the "General Conference" of Australasian Methodism, of which it was until that year an integral part. Since 1913 New Zealand Methodism has been a self-governing church³. In the 2006 census more than 121,000 persons identified themselves as Methodists.

"The governing body of the Methodist Church of New Zealand is the Conference. Its decisions are final and binding on both lay and ordained members of the Church.

"The Church holds certain real and personal property on trust for charitable objects or purposes directly or indirectly associated with the Methodist Church or for the furthering of social services, hospital or residential care, or educational needs directly or indirectly associated with the Methodist Church⁴.

"The Church also holds real and personal property on trust for the purposes of Methodist orphanages or children's homes and for the care and welfare or benefit of persons being cared for, or formerly cared for, in Methodist orphanages or children's homes in New Zealand"⁵.

The need for the Bill

"The bill provides an alternative mechanism, to that set out in the Charitable Trusts Act 1957, for amending Methodist trusts that have charitable purposes or objects which will be simpler and more cost effective than that provided under the Charitable Trusts Act 1957. Changes in recent years to the policy and law relating to the care of children and young persons and a social view that such care is no longer appropriately provided for by orphanages or children's homes means that a significant number of relatively small trusts need to have their purposes expanded so that those trust funds can be used in a more appropriate way for the care of children and young persons in New Zealand. Such changes cannot be brought about economically through the use of the Charitable Trusts Act 1957 and the High Court. Both the Presbyterian and Anglican Churches have experienced similar difficulties and have prepared and have had passed Private Acts of Parliament which achieve similar objects to this bill"⁶.

² Methodism, Encyclopedia Britannica, Cambridge at the University, 11th edition, 1911, Vol. XVIII, p. 293.

³ "Methodism", A. H. McLintock (ed), *An Encyclopaedia of New Zealand*, 1966
<http://www.teara.govt.nz/1966/M/Methodism/Foundations/en> (retrieved 30 April 2009, 4.00pm).

⁴ Methodist Church of New Zealand Trusts Bill, 2009 No 29-, Explanatory note, General policy statement, p. 2.

⁵ Methodist Church of New Zealand Trusts Bill, 2009 No 29-1, Explanatory note, General policy statement, p. 1.

⁶ Methodist Church of New Zealand Trusts Bill, 2009 No 29-, Explanatory note, General policy statement, p. 2.

Main Provisions

Purpose

The Bill states that its purpose is to provide an alternative process for the variation of certain trusts relating to the Methodist Church and to widen the objects or purposes of trust funds and trust properties relating to Methodist orphanages or Methodist children's homes (*Part 1, Clause 3*).

Variation of Church trusts - reduced role for Attorney-General and High Court

The Bill provides for a method of varying Methodist Church trusts in addition to the method available in the variation of trust provisions in the Charitable Trusts Act 1957. Under the latter Act (Sections 31-50) the Attorney-General is very closely involved in the variation of charitable trusts (see Part 3 of that Act ("Schemes In Respect Of Certain Charitable Trusts") and Part 4 ("Schemes In Respect Of Charitable Funds Raised By Voluntary Contribution")). Under the Bill any scheme of variation of trust must be lodged with the Attorney-General as is required by the Act, but the method provided for in the Bill gives a more simplified role to the Attorney-General and the need to apply to the High Court for approval of the scheme is dispensed with. The Attorney-General may object to a scheme of variation within 90 days of it being lodged with him or her and any objection (which must be in writing) must then be lodged with the "committee" or the "legal adviser" who " ... must have regard to any written objections and any written representations made by the Attorney-General within those 90 days. However, 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". The "Conference" may then, in general terms, approve the scheme (*Part 2, Clauses 5-16*).

Meaning of "committee", "legal adviser" and "conference"

In the Bill the term "Committee" means: the President of the Methodist Church; the immediate past President; the General Secretary; the "President's legal adviser" and the "Tumuaki". The term "legal adviser" is defined in the Bill as " ... a barrister and solicitor of the High Court of New Zealand in active practice". The term "Conference" is defined as " ... the Annual Conference of the Methodist Church". The term "President's legal adviser" means " ... the legal adviser to the President appointed by the Conference each year under the laws and regulations". The term "Tumuaki" means " ... the person appointed to the Hui Poari to lead the tangata whenua, Te Taha Maori within the Methodist Church" (*Part 1, Clause 9 ("Submission of scheme to committee or legal adviser"); Clause 4, definitions of "President's legal adviser", "legal adviser", "Conference", and "Tumuaki"*).

Comment

Perhaps it should be clearly stated, for the avoidance of any conflicts of interest, that the President's legal adviser and the legal adviser in relation to any particular scheme should not be the same person.

Trusts for orphanages and children's homes

In relation to certain charitable trust funds and properties relating to Methodist orphanages or Methodist children's homes, or for the care, welfare, or benefit of persons being cared for, or formerly cared for, in Methodist orphanages or Methodist children's homes, the Bill provides that such funds are to be held for the welfare of children in New Zealand. However, if the trust fund or trust property is held for purposes in relation to specific Methodist orphanages or Methodist children's homes, then this applies only if it is impossible, impracticable, or inexpedient to give effect to those purposes (*Part 3, Clauses 17-20*).

Removal of trustees

The Bill provides that 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 (*Part 4, Clause 21*).

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