

**Reprint
as at 1 December 2014**



Mackelvie Trust Act 1958

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

An Act to vary the terms of certain trusts created by the will of the late James Tannock Mackelvie, of the County of Middlesex in England, Esquire

Whereas James Tannock Mackelvie, late of the County of Middlesex in England, Esquire (hereinafter called the **testator**), by his last will and testament bequeathed all the pictures, prints, bronzes, statues, vases, works of art, articles of vertu, and curiosities which should belong to him at the time of his death (hereinafter called the **said collection**) to his New Zealand trustees (hereinafter called the **trustees**), and also directed that certain moneys should be paid to or received by the trustees:

And whereas the testator by his said will declared that the trustees should stand possessed of the said collection and moneys upon trust, inter alia, to purchase or acquire a site in or near the City of Auckland and cause to be erected thereon a museum capable to receive and display the said collection and any additions that might be made to the same and to place therein the said collection and to hold the said museum and the contents thereof as a free public museum of art forever and to allow the said museum to be visited at all suitable times on Sundays as well as weekdays by all decent and orderly persons without payment or exceptional privilege, and that after paying the cost of erecting and fitting the said museum and setting apart certain sums as in the said will directed to provide for the payment of the salary or salaries of 1 or more competent custodians and the cost of keeping the said museum in repair and of insuring the same and the contents thereof upon trust to lay out the surplus of the trust moneys in the hands of the trustees in the purchase, transport, and arrangement of other works of art of any kind or objects of curious or antiquarian interest connected with art to be added to and held and exhibited with the said collection and to fit and appropriate a portion of the said museum as a public library of art and to lay out in purchasing books, instructive, historical, or curious in matters of art, any moneys which might be laid out in adding to the said collection:

And whereas it proved impracticable for the trustees, having regard to the moneys available to the trustees, to purchase a site and erect a museum thereon:

And whereas in the year 1892 the body corporate called the Mayor, Councillors, and Citizens of the City of Auckland (hereinafter called the **Corporation**) made available to the trustees a building erected as an annex to the Auckland Art Gallery, and such annex together with additions thereto were used for many years exclusively for the safe custody and exhibition of the said collection and additions made thereto (hereinafter together called the **Mackelvie collection**):

And whereas the trustees on 3 March 1913 were incorporated under the provisions of the Religious, Charitable, and Educational Trusts Act 1908 under the name of the Mackelvie Trust Board (hereinafter called the **Board**):

And whereas the arrangements between the trustees and the Corporation and the Board and the Corporation regarding the deposit and exhibition of the Mackelvie collection in the said buildings hereinbefore referred to were set forth in a deed bearing date 29 September 1892 and subsequently in a deed bearing date 30 May 1922:

And whereas the first of such deeds was entered into subsequent to the approval of a scheme by the Supreme Court of New Zealand on 16 September 1892 and the second of such deeds was sanctioned and approved by the Supreme Court aforesaid on 2 August 1922:

And whereas in the year 1954 the Corporation informed the Board that it would no longer be able to keep the said buildings available for the safe custody and exhibition of the Mackelvie collection exclusively:

And whereas in the opinion of the Board it still is and may for many years remain impracticable for the Board to purchase or acquire a site and erect thereon a museum of art and it is the desire of the Board to obtain by legislation wide powers whereby the Board may be enabled to make the best possible use of the Mackelvie collection:

And whereas in or about the year 1911 an appointment was made of the Mayor of Auckland for the time being to be *ex officio* one of the trustees:

And whereas by letter dated 19 May 1954 the then Mayor of Auckland resigned office as a member of the Board and doubts have arisen as to the effect of such resignation:

And whereas it is desirable to remove such doubts and to make provision for the appointment from time to time by the Auckland City Council of a member of the Board.

1 Short Title

This Act may be cited as the Mackelvie Trust Act 1958.

2 Interpretation

In this Act, if not inconsistent with the context,—

Board means the Mackelvie Trust Board, a body corporate originally incorporated under the provisions of the Religious, Charitable, and Educational Trusts Act 1908 and now deemed to have been incorporated under the Charitable Trusts Act 1957

Corporation means the body corporate called the Mayor, Councillors, and Citizens of the City of Auckland

Mackelvie collection means all those the pictures, prints, bronzes, statues, vases, works of art, articles of vertu, and curiosities bequeathed by the testator and vested in the Board together with such additions thereto as have heretofore been made or may hereafter be made

will means the said will of James Tannock Mackelvie.

3 Empowering as to custody of Mackelvie collection

The Board, instead of acquiring a site by purchase and erecting a building for a museum of art, as in the will directed, may make such arrangements as it thinks fit for the custody of the Mackelvie collection in any building or buildings in or

near the City of Auckland which may from time to time be available and in the opinion of the Board suitable for the custody thereof.

4 Empowering as to exhibition in or near the City of Auckland

The Board shall have power from time to time to make such arrangements as it thinks fit for the exhibition at any place or places in or near the City of Auckland of the Mackelvie collection or any parts thereof, whether or not such exhibition takes place under the control of the Board or under the control of the Corporation or under the control of any other person, persons, association, society, or body corporate and whether the same be an exhibition of the Mackelvie collection or any part thereof as a separate unit or whether the same be integrated at such exhibition with any works of art not forming part of the Mackelvie collection.

5 Empowering as to exhibition elsewhere

In so far as the Board may from time to time consider that any parts of the Mackelvie collection are not required for the time being for exhibition in or near the City of Auckland, the Board may make such arrangements as it thinks fit for the exhibition thereof at any place or places elsewhere and whether within or outside the Dominion of New Zealand. Any such arrangements may be for the exhibition of such parts of the Mackelvie collection as aforesaid by or under the control of the Board or by or under the control of any other person or persons, association, society, or body corporate and whether the same be an exhibition of the Mackelvie collection or any part thereof as a separate unit or whether the same be integrated at such exhibition with any works of art not forming part of the Mackelvie collection.

6 Empowering when charges made for admission

The Board may permit the exhibition of any part or parts of the Mackelvie collection under circumstances where a charge is made for admission, but this power shall not be exercised by the Board unless—

- (a) in the opinion of at least three-fourths of the members of the Board for the time being in New Zealand it is desirable so to do; and
- (b) in the case of an exhibition in or near the City of Auckland of a part of the Mackelvie collection which in the opinion of the Board is a substantial part, the Board is satisfied that there will at the same time be exhibited in or near the City of Auckland some other substantial part of the Mackelvie collection without any charge being made for admission.

7 Investment fund

- (1) The Board shall with all convenient speed after the coming into force of this Act set aside moneys and investments to form a fund to be called **the investment fund**. The moneys and investments to be set aside as aforesaid shall be such as the Board in its sole discretion shall think fit and as are in the opinion

of the Board to the value of 20,000 pounds or as near to that amount as the assets of the Board (other than the Mackelvie collection) shall permit. The Board shall also divide the investment fund into 2 equal parts, to be called **Fund A** and **Fund B** respectively.

- (2) The Board shall have power to invest any moneys from time to time forming part of the investment fund in any of the modes of investment for the time being authorised by the law of New Zealand for the investment of trust funds and shall also have power (subject to the provisions of the next succeeding subsection) to invest any moneys from time to time forming part of Fund B in quoted financial products of a listed issuer. In addition the Board shall have power to vary or transpose any investments for the time being forming part of Fund A or Fund B respectively into or for other investments of any nature hereby authorised in respect of each such fund. The Board shall be under no obligation to maintain Fund A and Fund B at equal values.
- (3) No investment shall be made in stock, shares, or debentures of any company unless such investment shall have been approved in writing by the manager for the time being at Auckland of the bank which is for the time being the banker of the Board, and also by a person authorised to undertake trading activities on a licensed market.
- (4) In this section, **quoted**, **financial products**, **listed issuer**, and **licensed market** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 7(2): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(3): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Section 7(3): amended, on 1 December 2002, by section 30 of the Securities Markets Amendment Act 2002 (2002 No 44).

Section 7(4): inserted, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

8 Expenditure by the Board

- (1) All moneys and investments from time to time in the hands of the Board other than the capital of the investment fund shall be applied by the Board in the first place in the payment of all costs and expenses of and incidental to the administration and execution of the trusts of the will as varied by this Act, and any balance of such moneys from time to time in the hands of the Board and not required for the foregoing purposes shall be used both as to capital and income and as and when the Board thinks fit in the purchase or hire or transport or arrangement of works of art of any kind or objects of curious or antiquarian interest connected with art or period furniture or in purchasing books instructive, historical, or curious in matters of art.
- (2) With the consent of a Judge of the High Court of New Zealand the Board may apply the whole or any part of the capital of the investment fund in or towards

any of the purposes referred to in the preceding subsection or in or towards the purchase or acquisition of a site for a museum of art or in or towards the erection of a museum of art. Any such consent may be given subject to any conditions which the Judge thinks fit. Notice of any application for such consent shall be given by the Board to the Corporation, which shall be entitled to appear and be heard on such application.

Section 8(2): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

9 Marking of Mackelvie collection

The Board shall, so far as is practicable, ensure that all items of the Mackelvie collection exhibited are shown by suitable markings to be part of the Mackelvie collection.

10 Acceptance of other property by the Board

The Board is hereby empowered to accept and hold property for use for any charitable purpose which in its opinion is similar to or will be advantageous to the objects and purposes of the will and of this Act.

11 Manner of exercising powers of the Board

- (1) Any power vested in the Board shall, subject to the provisions of section 6, be deemed duly exercised if a resolution in favour of the exercise of such power is either—
 - (a) passed at a duly convened meeting by a majority of the members of the Board for the time being in New Zealand; or
 - (b) consented to in writing by all the members of the Board for the time being in New Zealand.
- (2) A meeting of members may be convened by any member or by the Secretary at the request of any member and shall be deemed duly convened if all the members of the Board for the time being in New Zealand are present thereat or if notices of such meeting in writing shall have been posted not less than 3 clear days prior to such meeting addressed to all members of the Board for the time being in New Zealand at their usual places of residence or business.

12 Declaratory as to resignation by the Mayor of Auckland

For the purpose of removing doubts it is hereby declared and enacted that as from 19 May 1954 (being the date when the then Mayor of Auckland notified his resignation as a member of the Board), the Mayor of Auckland for the time being has ceased to be and no longer is a member of the Board *ex officio*.

13 Appointment of member of Board by Auckland City Council

- (1) The Auckland City Council shall have power to appoint 1 person (who may or may not be for the time being a member of the Council) to be a member of the Board.

- (2) The first appointee of the Council shall be appointed by resolution of the Council as soon as may be after the passing of this Act, and unless his office sooner becomes vacant he shall hold office until his successor appointed under the next succeeding subsection comes into office.
- (3) Thereafter the appointment by the Council of a member of the Board shall be made by resolution of the Council at a meeting held in the month of March next following every year in which municipal general elections are held under the Municipal Corporations Act 1954 or any Act passed in substitution therefor. The person so appointed shall come into office on the day following that on which he is appointed.
- (4) A retiring appointee of the Council shall be eligible for reappointment.
- (5) The office of a member of the Board appointed by the Council shall become vacant if he—
 - (a) dies; or
 - (b) resigns his post by writing under his hand delivered to the Secretary or Chairman of the Board; or
 - (c) becomes of unsound mind; or
 - (d) becomes a bankrupt or makes any composition with any of his creditors for less than 20 shillings in the pound, or makes an assignment of his estate for the benefit of his creditors; or
 - (e) is convicted of any offence punishable by imprisonment; or
 - (f) is absent without leave from 3 consecutive meetings of the Board; or
 - (g) accepts any paid office or place of profit under the Board.
- (6) In the event of a vacancy occurring under the last preceding subsection, the same shall be filled by the Council by resolution passed at a meeting held as soon as may be after the time the vacancy occurred. The person appointed to fill the vacancy shall come into office on the day following that on which he is appointed, and he shall hold office only for the residue of the term for which his predecessor was appointed.
- (7) The validity of any proceedings of the Board shall not be impeached on the ground that at the time when such proceedings took place no person was holding office as a member of the Board by virtue of an appointment made under this section.

14 Protection of persons dealing with the Board

It shall not be necessary for any person with whom any transaction shall be entered into by the Board purporting to act under any of the powers conferred by this Act to inquire into the necessity therefor or the propriety thereof.

15 Private Act

This Act is hereby declared to be a private Act.

Reprints notes

1 *General*

This is a reprint of the Mackelvie Trust Act 1958 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Securities Markets Amendment Act 2002 (2002 No 44): section 30

Judicature Amendment Act 1979 (1979 No 124): section 12