

**Reprint  
as at 12 November 2018**

**Presbyterian Church Property Act 1885**

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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.

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**An Act to define the position of the Presbyterian Church of New Zealand, and to vest certain properties held for the purposes of or in connection with such Church in trustees, and to provide for the management of such properties.**

## **1 Short Title**

The Short Title of this Act is the Presbyterian Church Property Act 1885.

## 2 Application of Act

This Act shall only be in force and have general application in the Provincial Districts of Auckland, Hawke's Bay, Taranaki, Wellington, Nelson, Marlborough, Canterbury, and Westland. But it shall also have application in all other parts of New Zealand in relation to any property which the Presbyterian Church may now have or at any time acquire in such other parts.

## 3 Interpretation

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

**congregation** means the body of persons now or hereafter from time to time in existence worshipping in connection with, and under the spiritual jurisdiction of, the General Assembly of the Presbyterian Church of New Zealand

**General Assembly** means the General Assembly of the Presbyterian Church as herein defined

**managers** means the Deacons' Court or committee of persons or other body or authority, however designated, elected or appointed in accordance with the usages and practice of the Presbyterian Church, in whom is vested the control and management of the temporal affairs of the congregation of any church, and includes the minister and elders of such congregation *ex officio*

**minister** means a minister or ministers of the congregation in relation to which the expression is used

**Presbyterian Church** means the Presbyterian Church of Aotearoa New Zealand, formerly known as the Presbyterian Church of New Zealand, as recognised by this Act

**Presbytery** means the ecclesiastical body of the said Church having authority over the congregations within the bounds assigned to it by the General Assembly

**property** means real and personal property of every kind, and every interest therein, and includes money.

Section 3 **Presbyterian Church**: replaced, on 24 April 1996, by section 20 of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

## 4 Presbyterian Church of New Zealand recognised as from 21 September 1875

The Presbyterian Church now existing within the provincial districts aforesaid shall, as from 21 September 1875, be deemed to have been and shall henceforth be known as the Presbyterian Church of New Zealand; and wherever, in any Act of Parliament now in force, reference is made to the Presbyterian Church of New Zealand, such reference shall extend and apply to the Presbyterian Church herein mentioned and recognised.

## **5 Repeal**

The New Zealand Presbyterian Church Act 1875, and the New Zealand Presbyterian Church (No 2) Act 1875, are hereby repealed.

## **6 Election of trustees**

The General Assembly, at a general meeting held in accordance with the usages of the Presbyterian Church, shall elect not less than 7 nor more than 20 persons, being members of the said Church, of full age and good fame, and resident in New Zealand, to be trustees for the purposes of this Act, and who, with their successors, are hereinafter referred to as the **trustees**.

Section 6: amended, on 2 December 1970, by section 2 of the Presbyterian Church Property Amendment Act 1970 (1970 No 6 (P)).

## **7 First election when held**

The first election of trustees shall be held at the first general meeting of the General Assembly, to be held not later than 12 months after the passing of this Act.

At least 2 days' notice of such election shall be given in the General Assembly, and the trustees shall be elected at a meeting at which not less than 25 members shall be present.

## **8 Declaration giving names of trustees to be filed in Supreme Court and to be evidence**

The declaration of the Moderator for the time being of the General Assembly in writing, in the form or to the effect thereof, set forth in Schedule 1, countersigned by the Clerk of the General Assembly, stating the names of the persons who have been so elected shall (without payment of any fee) be filed of record in the office of the Registrar of the Supreme Court at Wellington within 30 days after such election shall have been made; and every such declaration so made shall be conclusive evidence of the matters and things therein stated without proof of any signature thereto.

## **9 Declaration on election of new Trustees**

When, under the provisions of this Act, a new election of trustees, or of any trustee, is made, the Moderator shall make and cause to be filed in the office of the District Registrar of Companies at Wellington, a like declaration, countersigned by the Clerk of the General Assembly, stating—

- (a) the names of the newly elected trustee or trustees; and
- (b) the names of all the trustees holding office at the date of the declaration.

Section 9: replaced, on 24 April 1996, by section 21(1) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

**10 Copies of declaration to be evidence**

Copies of any such declaration, certified under the hand of the District Registrar of Companies at Wellington, shall be evidence in all Courts, or for the purpose of evidencing title to any property and for all other purposes, of the facts stated therein, without any proof of the signature of such Registrar.

Section 10: amended, on 24 April 1996, by section 21(2)(a) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

Section 10: amended, on 24 April 1996, by section 21(2)(b) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

**11 Title of trustees**

Upon the first filing of such declaration the persons named therein, and their successors in office, shall for ever thereafter be a body politic and corporate by the name of the Presbyterian Church Property Trustees.

**12 Trustees may sue and be sued**

By that name the trustees may sue, prosecute, and shall be sued, plead and be impleaded, defend and be defended, in any Court of Judicature in New Zealand, or elsewhere, in the same manner and as fully and effectually as any person in New Zealand can or may do.

**13 Trustees may acquire property**

By the name aforesaid the trustees shall at all times hereafter be able in law to purchase, acquire, have, take, hold, receive, and enjoy all or any property whatsoever in the most full and ample manner that may be allowed by law.

**14 Common seal**

- (1) The trustees shall have and use a common seal for the affairs and business of the corporate body, and may from time to time break, change, alter, or make new such seal, as they may think fit.
- (2) Any affixing of the common seal shall be attested by—
  - (a) 2 trustees; or
  - (b) 2 persons authorised for the purpose by bylaws made under this Act.

Section 14(2): inserted, on 24 April 1996, by section 22 of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

**15 Property to vest in trustees**

Upon the incorporation of the trustees under this Act the following provisions shall have effect:

- (1) All property whatsoever which may then be held by or vested in any trustees, committee, or other persons or body, upon trust for the use or purposes of any congregation of a Presbyterian Church, or for the residence of any minister of such church, or for any school in connection therewith, or for any other pur-

pose whatsoever in connection with or in relation to such congregation, residence, or school as aforesaid, shall vest in the trustees incorporated by this Act, for the like estate or interest therein as, prior to the coming into operation of this enactment, was vested in or held by such trustees, committee, or other persons or body as aforesaid; and that without any assignment, conveyance, transfer, or other assurance whatsoever, upon the trusts hereinafter mentioned, and under and subject to the provisions of this Act.

- (2) All property held by any trustee or trustees or other person or persons, or under the control or management of the General Assembly, for the objects or purposes following, that is to say—
- (a) aged and Infirm Ministers Fund,
  - (b) widows and Orphans Fund,
  - (c) foreign Mission Endowment,
  - (d) somervell Bursaries,

and all other property whatsoever (not coming within the terms of the last-preceding subsection) which may at the time of the coming into operation of this enactment be held by or vested in any person or persons as trustees of such property for any general or special purpose connected with or relating to the Presbyterian Church as a whole, or for any educational, charitable, or other purpose or object, or for any person or class of persons that now is, or hereafter may be, connected with or have any relation to the said Church, shall, for the like estate or interest respectively therein as aforesaid, in like manner vest in the trustees incorporated under this Act, without any assignment, conveyance, transfer, or other assurance whatsoever, in the manner hereinafter mentioned, and under and subject to the provisions of this Act.

Section 15(2): amended, on 2 December 1970, by section 5 of the Presbyterian Church Property Amendment Act 1970 (1970 No 6 (P)).

## **16 Persons in whom property vested to convey same to trustees**

Every person or persons in whom any property may be in any manner vested upon trust for all or any of the purposes mentioned in the last-preceding section for any estate or interest of any kind, shall be and he or she or they are hereby required and empowered, upon the request of the trustees incorporated under this Act, in any case where such trustees may deem it necessary or expedient, to assign, convey, or otherwise transfer such property to the trustees for the purposes of this Act, and such first-mentioned person or persons, or his or her or their legal or personal representatives (as the case may require), may sign, execute, and do all such deeds, instruments, and acts as may be necessary for such purposes or any of them.

**17 Transfer of freehold property to trustees**

- (1) Upon receipt of a statutory declaration that complies with subsection (2), the Registrar-General of Land must transfer the land to which the statutory declaration relates to the trustees in their corporate name.
- (2) The statutory declaration must—
  - (a) be made by any 3 of the trustees incorporated under this Act; and
  - (b) relate to land described in a record of title; and
  - (c) state that the land referred to in paragraph (b) is held on behalf of the trustees.

Section 17: replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

**18 On investment of property in trustees rights of original holders to cease**

When, under the provisions of this Act, any property shall become vested in the trustees, all the rights, powers, and liabilities of the person or persons in whom the same was theretofore vested shall cease and determine, and he or she or they shall henceforth be wholly released and discharged from the performance of the trusts or the exercise of the rights, powers, or duties previously exercisable, or that might have been performed by him or her or them:

provided that nothing herein shall be deemed to prevent any such person from being called on to account for any moneys received or expended, or for the doing or non-performance of any act, matter, or thing in relation to his or her trust, prior to the vesting or transmission of such property under this Act.

**19 Existing contracts, and rights, remedies, etc, to be exercised and enforced by trustees**

All contracts of every kind in existence at the date of the incorporation of the trustees under this Act, and which could be enforced by or against the trustees of any property affected by the operation of this Act, or any committee or other persons or body in whom any such property may have been vested at the date aforesaid, and all rights, remedies, and powers in existence or which may afterwards exist or arise upon or in respect of any such contract or in relation thereto, shall be exercised and enforced only by and against the trustees incorporated under this Act.

**20 Property held in trust for particular congregation, how administered**

All property which under or by virtue of this Act shall be vested in or held by the trustees for the purposes of any particular congregation, or which may at any time hereafter be so held or vested, and whether as a church for the purposes of public worship according to the usages and practices of the Presbyterian Church for the time being, or for the purposes of a school or schools, or as a residence for any minister of such church, shall be held and administered by the trustees upon, under, and subject to the trusts affecting the same, and, so far

as such trusts shall not extend, or if there shall be no such trusts expressed by any deed or instrument, then upon the trusts and under and subject to the powers declared and set forth in Schedule 2.

**21 When land not suitable trustees may apply to Supreme Court for order to sell or exchange**

- (1) In any case where land has been granted or conveyed as a site for a Presbyterian Church, manse, or school, or for any of such purposes conjointly with any other purpose connected with such church, and whether specifically defined or not, and it shall appear to the trustees that such land is not suitable or is inconvenient for the purposes for which it was originally granted or conveyed, they may apply by petition in a summary way to a Judge of the Supreme Court for an order to sell or exchange such land for other land in a more suitable position.
- (2) If the Judge is satisfied that it is for the benefit or convenience of the persons or body for whose benefit or in whose behalf such land was originally granted or conveyed, the Court—
  - (a) may order that the said land shall be sold at such time and manner and on such conditions as the Court thinks fit;
  - (b) may order that other land shall be purchased in lieu of the land sold;
  - (c) may authorise an exchange of land including payment to be given or received by way of equality of exchange;
  - (d) may direct the trusts upon which the proceeds of sale (including any money received by way of equality of exchange) are to be held or applied.
- (3) The Judge shall have all such jurisdiction and authority to give effect to this Act and any order made by him or her as he or she would have in any matter within the ordinary jurisdiction of the Supreme Court, and may require that all or any person or persons shall be represented before him or her, and may order by and to whom the costs of any persons appearing on such application shall be paid, and may modify or alter any order made by him or her.
- (4) Subject to the terms of any order made under subsection (2), the sale proceeds and any land purchased or taken in exchange or received by way of equality of exchange, shall be held by the trustees upon and subject to the like trusts and for the like purposes and objects as the land so originally granted or conveyed was held.

Section 21(2): replaced, on 24 April 1996, by section 23(1) of the Presbyterian Church Amendment Act 1996 (1996 No 2(P)).

Section 21(4): replaced, on 24 April 1996, by section 23(2) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2(P)).

## **22 Trustees' delegation of powers in Schedule 2**

Upon a requisition signed by a majority of the managers of any Presbyterian Church, the trustees may from time to time, by writing under their seal, delegate to any 3 or more of such managers to be named in such writing, all or any of the powers and authorities mentioned in Schedule 2 upon such terms and conditions as they may think fit; and upon any such delegation being so made all powers and authorities conferred thereby may be exercised by the managers named in such writing in the name and on behalf of the trustees as effectually as such trustees might or could have done. And any such delegation may from time to time be revoked by the said trustees in part or in whole, and a new delegation may be made in lieu thereof.

## **23 Trusts and purposes on which property to be held**

All property which by virtue of this Act shall be vested in or held by the trustees for any general or special purposes connected with the Presbyterian Church as a whole or otherwise, as set forth in subsection (2) of section 15, shall be so held for the same purposes and trusts, and with, under, and subject to the same powers and provisions, as are or at any time may be in force or declared under any deed or instrument affecting such property respectively.

## **24 Method of contracting**

- (1) A contract or other enforceable obligation may be entered into by the trustees as follows:
  - (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the trustees in writing under seal:
  - (b) an obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the trustees in writing by a person acting under the express or implied authority of the trustees:
  - (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the trustees in writing or orally by a person acting under the express or implied authority of the trustees.
- (2) Subsection (1) applies to a contract or other obligation—
  - (a) whether or not that contract or obligation was entered into in New Zealand; and
  - (b) whether or not the law governing the contract or obligation is the law of New Zealand.

Section 24: replaced, on 24 April 1996, by section 24 of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

**25 Saving of acts done by trustee**

All acts done by any person purporting to act as a trustee under this Act shall be valid, notwithstanding any defect that may exist or be afterwards discovered in his or her election or qualification.

**26 When trustee deemed to have resigned**

If any trustee shall die or resign his or her office, or refuse or neglect to act, or shall cease to reside in New Zealand for more than 6 months in succession, or shall become bankrupt or a confirmed lunatic, or shall cease to be a member of the Presbyterian Church of New Zealand, or be suspended from membership therein, he or she shall be deemed to have resigned his or her office as trustee; and the General Assembly may at any time, by resolution passed by such Assembly, remove any trustee from his or her office, and without alleging any cause for such removal.

**27 Who to judge when trustee resigned**

The General Assembly shall be the sole judge as to whether any trustee has become disqualified or ceased to be a trustee within the meaning of the last-preceding section.

**28 Casual vacancies, how filled up**

In case of a casual vacancy in the number of trustees elected at any time under this Act, it shall not be necessary to elect another trustee until the next general meeting of the General Assembly, when such election shall be held in the manner hereinbefore provided; but if by any means the number of trustees shall be reduced to or below the number fixed for a quorum under the powers hereinafter contained, the Moderator of the General Assembly may nominate so many eligible persons as shall be necessary to make up the original number of trustees.

**29 Confirmation of election of new trustee**

Every such nomination shall be as effectual for all purposes as if the persons nominated had been elected at a meeting of the General Assembly, and the Moderator shall do all things necessary to perfect the status of such nominated trustees accordingly as hereinbefore prescribed, and every declaration made by the Moderator in respect of such nominated trustees shall be filed in the same manner as the declaration of original trustees is filed; but the person or persons so nominated shall only hold office till the next meeting of the General Assembly, when such nomination may be confirmed by the said Assembly or a new election held in the manner hereinbefore provided.

**30 Trustees may make, etc, bylaws**

The trustees may from time to time make, alter, or revoke bylaws for all or any of the following purposes:

For the use and custody of the common seal;

For the conduct of business at their meetings, whether general or special meetings, and fixing the quorum thereat;

For prescribing the functions and duties of any officer or person employed by them;

And generally for the purpose of giving effect to this Act, so long as such bylaws are not inconsistent with this Act or any trust or duty vested in or imposed on such trustees.

**31 Trustees to appoint chairman and office bearers**

The trustees may from time to time appoint a Chairman, who shall preside at all meetings; and also a treasurer, secretary, or other officers necessary for carrying on the business of the trustees, and who shall be paid such salaries or remuneration as the General Assembly may from time to time determine.

In case of the absence of the Chairman from any meeting, the trustees then present shall elect a chairman for that meeting.

Meetings may be held at such place or places and at such dates or times as may be decided by the trustees from time to time.

**32 Minutes and accounts to be kept**

The trustees shall keep proper minutes of all their proceedings, and also full and sufficient separate accounts of every trust property vested in them under or by virtue of this Act, and of the several purposes for which all moneys have been received or paid in respect of every such property; and such accounts shall be kept in such form and shall be rendered to such bodies or persons as the General Assembly may from time to time determine; and, in case the General Assembly shall not so determine, then any congregation or its managers may from time to time require copies of all such accounts so far as the same relate to any property in which such congregation shall have any interest or right.

**33 Auditor of accounts of trustees**

The General Assembly may from time to time appoint an auditor or auditors of the accounts of the trustees generally, or may appoint a special auditor in any particular case; and such auditor or auditors, whether general or special, shall report to the General Assembly in such manner as that body directs.

**34 Trustees to make annual report**

At least once in each year, or oftener if so required by the General Assembly, the trustees shall report to such Assembly upon the state and condition of every property or trust fund vested in or held by them for the purposes of any congregation, and of every other property or trust fund vested in or held by them in any other manner for the purposes of or under the provisions of this Act; and

such report shall be made in such form and contain such particulars as the General Assembly may from time to time prescribe.

**35 Trustee liable only for his or her own acts**

Every trustee shall be chargeable only for such money as he or she shall actually have received, although he or she may have joined in any receipt for money received by any other of them, and shall not be answerable for the acts of any other trustee, nor for any loss which may arise by reason of any trust funds being deposited in the hands of any banker, society, or agent, or for the sufficiency or insufficiency or deficiency of any security upon which any trust money, or any part thereof, may be invested, or for any loss in the execution of any trust, unless the same shall happen through his or her own wilful neglect or default.

**36 Receipts by treasurer, etc, sufficient discharge**

The receipt in writing of any treasurer, secretary, or agent of the trustees, duly authorised in that behalf, shall be a good and effectual discharge for all money paid to him or her on their behalf under or by virtue of any trust reposed in them, and shall exonerate the person or persons paying such money from seeing to the application thereof; and it shall not be necessary for any purchaser or any person to or with whom any sale, exchange, or lease shall be made, or other transaction entered into under the powers conferred by this Act, to inquire into the necessity therefor or the propriety thereof.

**37 Bequests to trustee**

Any person may give, devise, or bequeath to the trustees any property for any purposes connected with a congregation of the Presbyterian Church, and whether for the purposes of a site for such Church, or any school or schools connected therewith, or as a residence for the minister or ministers of such Church, or to use and apply any moneys, funds, or income derived from such property upon or for all or any of such purposes, or upon or for such other purposes as may be declared by the donor or testator respecting the same for the objects aforesaid.

**38 If trusts not defined property to be held for purposes in Schedule 2**

If any property shall be so given, devised, or bequeathed, or if any property shall be purchased or acquired by the trustees or any other person or persons for all or any such purposes or objects as aforesaid, without defining or declaring the trusts thereof, then such property shall be held, managed, and dealt with upon and for the purposes mentioned and set forth in Schedule 2, or such of them as the trustees shall deem to be applicable. And a statement or declaration in any instrument that such property is, or is to be, held for the purposes of a Presbyterian church (and naming such church) shall be sufficient authority to

the trustees to exercise the powers conferred by this Act in respect of such property or any part thereof.

**39 Provision in case of congregation ceasing to exist**

The provisions of this and the next 2 succeeding sections shall take effect with regard to every congregation of the Presbyterian Church affected by this Act under the following circumstances:

- (1) in the event of any congregation ceasing to exist; or,
- (2) the members of any congregation becoming so divided as to render the existence of such congregation in the opinion of the Presbytery undesirable; or,
- (3) in case the trustees shall refuse or neglect to obey the directions of the General Assembly in respect to any property in any case where they ought lawfully so to do.

Then, and in any such case, all property held by the trustees shall be disposed of and may be dealt with in such manner as the Presbytery shall by resolution direct.

**40 Transfer of property**

The Moderator for the time being of the Presbytery, by a deed-poll setting forth such resolution or the effect thereof, and attested by the clerk for the time being of such Presbytery, shall assure, convey, assign, or otherwise deal with the said property and the income or proceeds thereof as the said Presbytery may by any such resolution have directed.

Such deed, if purporting to be signed and attested as aforesaid, shall be evidence of the facts therein respectively stated, and shall effectually convey and assign the whole property and premises thereby purporting to be conveyed, assigned, or otherwise dealt with.

**41 Deed of transfer to be evidence**

Any such resolution or deed purporting to be signed and attested as aforesaid shall be conclusive evidence of the existence of such Presbytery, and of the happening of all conditions precedent:

provided that it shall be lawful for the trustees to assure, convey, assign, or deal with the same property, in terms of any such resolution, in lieu of the said Moderator.

**42 Right of appeal**

Nothing in this Act shall be deemed to control or affect any right of appeal to any ecclesiastical authority which any congregation, or any member or adherent thereof, may have or be entitled to in accordance with the laws or rules for the time being of the Presbyterian Church, so far as respects the exercise of any

right, power, duty, or function by this Act given to, or imposed upon, the trustees or any of them, or any other person or authority whomsoever.

## Schedule 1

### **Declaration of Moderator of the General Assembly as to election of trustees**

*The Presbyterian Church Property Act 1885.*

I, the undersigned, Moderator for the time being of the General Assembly of the Presbyterian Church, do hereby certify and declare that at a general meeting of the said Assembly held at [*place*], on [*date*] [*here insert names, residences, and occupations of trustees*], were duly elected trustees for the purposes of the above-mentioned Act.

Signed:

, Moderator.

Countersigned:

*Clerk of the General Assembly of the Presbyterian Church of New Zealand.*

## Schedule 2

- 1 All property which now is or which may at any time hereafter be or become in any manner vested in the trustees for the purposes of a Presbyterian congregation, or any of such purposes, shall be held by such trustees upon the several trusts affecting the same, and so far as such trusts shall not be inconsistent with those hereinafter set forth, upon trust for the following purposes:
- (a) that every place of worship erected upon any land held by or vested in the trustees, or that may hereafter be erected thereon, shall from time to time and at all times be used, occupied, and enjoyed as and for a place of religious worship by the congregation thereof in the way and manner in which by the usages of the Presbyterian Church places of religious worship may be used, occupied, or enjoyed, and to the end that at all times the Holy Scriptures may be preached and expounded therein, that ordinances may be administered, and that the usual acts of religious worship may be performed by such person or persons as may from time to time be authorised or appointed to do so by the Presbyterian Church acting through the medium of its Kirk Sessions, Presbyteries, Synods, and the General Assembly of the said Church, or according to the forms in use by the said Church for the time being.
  - (b) that schoolhouses and buildings erected or used for school purposes upon any land vested in the trustees, or that may hereafter be erected thereon, shall be used and occupied for the purposes for which they have been so erected.
  - (c) That any land, and the dwelling-house thereon used or occupied as a manse or residence for the minister for the time being of the church, together with the glebe (if any) attached thereto, shall be held and used for such purposes and so long as such minister shall be recognised as such by the Presbytery; and such minister shall and may during such time as aforesaid freely have, use, possess, and enjoy the said land and dwelling-house, and the glebe (if any), and take and receive the rents and profits of such glebe for his or her own use.
  - (d) that if any other property shall be vested in the trustees for any special object or purpose in connection with the congregation of any such church, or relating thereto, the same, or the income or profits thereof, shall be held or applied for such special object or purpose, with power to the trustees (subject to such trusts and the provisions herein contained) to invest the same if consisting of money or personal property in such investments as are for the time being authorised by this Act for the investment of trust funds for such time and in such manner as they may think fit, with full power to vary and change such securities from time to time.

- (e) that, if any such property shall be vested in or held by the trustees which shall not be affected by any special trusts, but shall be for any general purpose connected with the congregation of any such church as aforesaid, the trustees may manage and deal with such property, or the whole or any part of the income thereof respectively, as the congregation, with the consent of the Presbytery, shall direct, or otherwise as they think fit, for all or any of the purposes mentioned in this Schedule.

Clause 1(d): amended, on 8 November 1974, by section 3(7)(a) of the Presbyterian Church Property Amendment Act 1974 (1974 No 7 (P)).

- 2 Subject to this Act, every place of worship and every schoolhouse or building used for school purposes shall be in the immediate possession, charge, and control of the managers, and they shall have full power to make any alteration in, or addition to, any place of worship, manse, schoolhouse, or building used for school purposes, or to re-erect the same when necessary:

provided that no such alteration or addition or re-erection shall be commenced or made if the cost thereof is estimated to be more than £300 (or such greater sum as may from time to time be approved by resolution of the General Assembly of the Presbyterian Church of New Zealand), and no new buildings shall be so erected, until the plans of the alterations or additions, or of the building to be re-erected or erected, have been approved by the Presbytery of the bounds.

Clause 2: amended, on 25 October 1963, by section 2(a) of the Presbyterian Church Property Amendment Act 1963 (1963 No 3 (P)).

Clause 2 proviso: replaced, on 25 October 1963, by section 2(b) of the Presbyterian Church Property Amendment Act 1963 (1963 No 3 (P)).

- 3 Any place of worship or any schoolhouse may be used for any purpose hereinbefore stated, or for any other purpose upon such occasions or for such temporary purposes as the managers may, with the consent of the Session of such church, from time to time authorise.

- 4 The trustees shall not be entitled to take possession of the manse for the purpose of removing the minister therefrom without the written authority of the Presbytery having jurisdiction where such manse is situated:

provided that no liberty of access and admission to such manse and glebe (if any) as aforesaid, nor any occupation thereof for any length of time whatever, shall be construed to confer any right of property in the same upon the minister or any other person by whom the same or any part thereof may have been so occupied, nor shall any such occupation confer any right or title to retain possession of the same after such minister shall have been removed from his or her office by the Presbytery or the General Assembly, or shall have ceased to exercise his or her functions as minister of such church, nor shall the same be pleaded in bar of any ejectment or other process for the recovery of land or the possession thereof which may be brought by or on behalf of the trustees.

5

- (1) The trustees, on being so required by a meeting of the Congregation of the Church, and with the consent of the Presbytery of the bounds, may—
- (a) purchase, acquire, sell, or otherwise dispose of or deal with any lands or any interest therein which are to be or have been vested in the trustees for the purposes and on behalf of that Congregation, and any such transaction may be either by public auction or private contract, and either together or in parcels, and at one time or at different times:
  - (b) exchange any of the lands so vested in the trustees or any part thereof, for any other lands of a like tenure in or near the place where the same are situated, and may receive any money by way of equality of exchange, and out of any money in their hands applicable for such a purpose may give any money by way of equality of exchange.
- (2) Without restricting the provisions of subclause (1), the trustees may, with the consent of the managers, to be signified by a resolution passed by the said managers at a meeting held according to their usages and practice, and with the consent of the Presbytery of the bounds, lease or let any land which is not immediately required for the use of the Congregation, or in the occupation of the minister thereof. Such lease shall be for such term at such rent and on such terms and conditions as the trustees may require or approve. The trustees shall permit the managers to receive the rents and profits of any lands so leased, and such managers may apply the same at their discretion in or towards all or any of the purposes mentioned in clause 11:
- provided that, when any land is to be leased for a term in excess of 1 year, the trustees shall also require the consent by resolution of the Congregation.
- (3) The powers hereby conferred shall not be exercised in respect of any such lands or any part thereof, if the deed or instrument under which the lands or any of them were originally granted or set apart for the purposes of the Church contains an express prohibition of the sale, exchange, or lease, as the case may be, or any trust inconsistent with the exercise of the aforesaid powers, unless the consent of the donor or his or her legal representatives is first obtained to that exercise of the powers.

Clause 5: replaced, on 25 October 1963, by section 3(1) of the Presbyterian Church Property Amendment Act (1963 No 3 (P)).

- 6 All money arising from such sale, or received by the trustees for equality of exchange, after payment of the costs and expenses payable by them in relation to such sale or exchange shall, subject to clause 6A, be expended—
- (a) in the absolute purchase of other lands of like tenure and interest to those disposed of; or
  - (b) for the purchase of other land in fee-simple; or

(c) the erection or purchase of buildings for church purposes.

Clause 6: replaced, on 24 April 1996, by section 25(1) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

6A Notwithstanding clause 6, any money to which that clause applies—

(a) may be applied, subject to any directions of the General Assembly for the time being in force and at the discretion of the trustees, for such other church purposes as the congregation and the Presbytery of the bounds shall request; or

(b) may be invested in such investments as are from time to time authorised by this Act for the investment of trust funds.

Clause 6A: inserted, on 24 April 1996, by section 25(1) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

7 All lands which shall be so purchased or received in exchange and all moneys arising from such sale and invested as aforesaid shall be held by the trustees upon the like trusts as the property so to be sold or given in exchange was held subject to, so far as the same are capable of taking effect.

Clause 7: amended, on 12 September 1914, by section 8 of the Presbyterian Church Property Act 1885 Amendment Act 1914 (1914 No 1 (P)).

8 The trustees may from time to time borrow and take up at interest upon the security of any property vested in them any sum or sums of money for any of the purposes of any congregation of the Presbyterian Church, and, for the purpose of securing payment of any money so borrowed and the interest to become due thereon, may execute such mortgage or other security as may be necessary, with a power of sale and all usual and necessary powers to the person or persons lending the money:

Provided that no such money shall be borrowed or any security given for the same, except on the request of the managers of the Congregation for the purposes of which the money to be raised is required, such request to be signified in the manner aforesaid and confirmed by resolution of a meeting of the Congregation and with the consent of the Presbytery of the bounds.

Clause 8: amended, on 8 November 1974, by section 9(4) of the Presbyterian Church Property Amendment Act 1974 (1974 No 7 (P)).

Clause 8 proviso: replaced, on 25 October 1963, by section 3(2)(c) of the Presbyterian Church Property Amendment Act (1963 No 3 (P)).

9

*[Repealed]*

Clause 9: repealed, on 25 October 1963, by section 3(3) of the Presbyterian Church Property Act 1963 (1963 No 3 (P)).

10

*[Repealed]*

Clause 10: repealed, on 25 October 1963, by section 3(3) of the Presbyterian Church Property Act 1963 (1963 No 3 (P)).

11 Nothing herein contained shall be deemed to authorise the trustees to interfere with or control the general duties of the managers of the congregation, who shall have charge and management of its temporal affairs according to the usages of the Presbyterian Church; and, subject thereto and to the terms of this Schedule, the general duties of such managers shall be:

- (1) the collection of pew rents, receiving subscriptions, donations, devises and bequests for the purposes of the congregation of which they are managers;
- (2) the expenditure and control of all moneys borrowed or raised under the powers hereinbefore contained, for the building, repairing, altering, or enlarging the church, or any school or manse used or occupied in connection therewith;
- (3) the payment of stipends or salaries of the minister or ministers of the congregation, and of all church officers or attendants, and of all expenses attending the dispensation of Divine ordinances, and the performance of ministerial and clerical duties connected therewith, such payments to be made out of moneys received by such managers from all or any of the sources mentioned in this Schedule and applicable to such purposes;
- (4) and generally the payment of all charges and expenses incurred by them in the performance of their duties as such managers or for such other charitable purposes as may be directed by the congregation with the approval of the Presbytery of the bounds.

Clause 11(4): replaced, on 24 April 1996, by section 26 Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

12 This Schedule shall be read and construed as a part of the Act to which it is a Schedule, and for the purposes thereof any words or expressions relating to a congregation or a church, or the managers, minister, or ministers thereof respectively, shall be construed distributively as referring to each congregation or church, or body of managers, or minister or ministers, to which, or to whom, the provision is applicable.

## **Presbyterian Church Property Act 1885 Amendment Act 1914**

Private Act	1914 No 1
Date of assent	12 September 1914
Commencement	12 September 1914

### **1 Short Title**

This Act may be cited as the Presbyterian Church Property Act 1885 Amendment Act 1914, and shall be read together with and deemed part of the Presbyterian Church Property Act 1885 (hereinafter referred to as the principal Act).

### **2 Trustees may acquire property**

Any person may give, devise, or bequeath to the Trustees, and it shall be deemed lawful for the Trustees to have heretofore acquired and hereafter to acquire, any property for the establishment, maintenance, and administration of educational or charitable institutions of any nature whatsoever, or of any fund, institution, or organisation having for its object the spiritual, social, or physical improvement of any of the inhabitants of the Dominion of New Zealand.

### **3 Property bequeathed to be held on trusts declared**

Any property given, devised, or bequeathed to the Trustees upon trust for any of the said funds, institutions, or organisations shall be held and administered by them in accordance with the trusts (if any) declared by the donor thereof.

### **4 If trusts not declared, property to be held on trusts declared by General Assembly**

In case any property shall be given, devised, or bequeathed to the Trustees for any of the said funds, institutions, or organisations without a declaration by the donor of the trusts upon which the same is to be held, or if any property shall be purchased or acquired by the Trustees for any of the said funds, institutions, or organisations, then such property shall be held and administered in accordance with such trusts as shall be declared by the General Assembly; and the latter may from time to time revoke, vary, or extend such trusts or any of them.

### **5 Powers of Trustees**

- (1) The Trustees may from time to time exercise all or any of the following powers:
  - (a) sell any property held by them for any of the said funds, institutions, or organisations at such price or prices, and upon such terms and conditions as to the payment of the purchase money, as the Trustees shall think fit; and may either expend the net moneys received on any such sale in the purchase of other property in lieu of that sold or invest the same in the

manner hereinafter provided for the benefit of the fund, institution, or organisation to which the property sold shall have belonged:

- (b) for the furtherance of the objects of any of the said funds, institutions, or organisations, borrow at interest such moneys as they shall think fit upon mortgage of any property vested in them, or any part or parts thereof, or by the issue of debentures:

provided, however, that the moneys so borrowed shall be a charge only upon the property of the fund, institution, or organisation for which the same is raised:

- (c) from time to time exchange any property held by them upon trust for any of the said funds, institutions, or organisations for any other property, and may either pay or receive any money by way of equality of exchange:
- (d) from time to time demise or let any property vested in them for any of the said funds, institutions, or organisations for any period, at such rent or rents, and upon such terms and conditions as the Trustees shall think fit:
- (e) invest any surplus moneys from time to time in their possession in respect of any of the said funds, institutions, or organisations not required for immediate use in any investments for the time being authorised by the principal Act or by the Trustee Act 1956 for the investment of trust funds, and may either accumulate the income of such investments or apply the same or any part thereof in the furtherance of the objects of the fund, institution, or organisation to which the income shall belong:
- (f) subject to the existing rights of any person or persons, and on the direction of the General Assembly, amalgamate the Aged and Infirm Ministers' Fund and the Widows and Orphans' Fund.

- (2) The powers of sale or exchange contained in paragraphs (a) and (c) of subsection (1) may, in relation to land, be exercised only with the consent of the General Assembly, and the power of borrowing contained in paragraph (b) of subsection (1) may be exercised only with the consent of the General Assembly.

Section 5(1): amended, on 24 April 1996, by section 27(1) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

Section 5(1)(e): amended, on 24 April 1996, by section 27(2) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

Section 5(1)(e): amended, on 8 November 1974, by section 3(8) of the Presbyterian Church Property Amendment Act 1974 (1974 No 7 (P)).

Section 5(2): inserted, on 24 April 1996, by section 27(3) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

**5A Beneficiary Fund investments**

- (1) The Beneficiary Fund of the Presbyterian Church and its investments shall be invested and managed by the Trustees or by such other trustees as the General Assembly shall from time to time direct or approve:

provided that nothing contained or implied in this subsection shall authorise the investment of any part of the said Beneficiary Fund in the shares or other securities of any company the principal business or source of income of which is the business of brewers, distillers, licensed hotel proprietors, or wine and spirit merchants.

- (2) The Trustees shall have power to sell, exchange, vary, or transpose, any investments from time to time held by them for the said Beneficiary Fund.
- (3) The Trustees shall have power to lease or let any land or any interest therein from time to time held by them as an investment of the said Beneficiary Fund, for any period at such rent or rents and upon such terms and conditions as the Trustees shall think fit.

Section 5A: inserted, on 25 October 1963, by section 4 of the Presbyterian Church Property Act 1963 (1963 No 3 (P)).

Section 5A(1): replaced, on 24 April 1996, by section 28(1) of the Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P)).

**6 Persons in whom property vested may convey same to Trustees**

Any person, persons, or body corporate holding any property of any fund, institution, or organisation for any of the objects set out in section 2 are hereby empowered to convey and assure such property to the Trustees subject to the trusts upon which such person, persons, or body corporate shall hold the same.

## Presbyterian Church Property Amendment Act 1974

Private Act 1974 No 7

### 1 Short Title

This Act may be cited as the Presbyterian Church Property Amendment Act 1974, and shall be read together with and deemed part of the Presbyterian Church Property Act 1885 (hereinafter referred to as the principal Act).

### 2 Interpretation

In this Act, unless the context otherwise requires, the term **the Trustees** means the Presbyterian Church Property Trustees constituted as a body corporate under the principal Act.

### 3 Investment of trust funds

- (1) This section shall apply to all trust funds for the time being held by the Trustees in the Amalgamated Investment Fund established under the Presbyterian Church Property Trustees Empowering Act 1957.
- (2) The Trustees may from time to time invest any trust funds to which this section applies, whether at the time in a state of investment or not, in all or any of the following investments:
  - (a) in investments authorised for the investment of trust funds by the Trustee Act 1956 or by any other Act conferring powers on trustees:
  - (b) in the purchase or subscription of fully paid ordinary or preference shares, stocks, bonds, or debentures, or notes, whether registered or not, and whether conveying the right of conversion to shares or not, or of any other securities, of any company or other body corporate, that are at the time of acquisition listed on the official list of any stock exchange affiliated to the Stock Exchange Association of New Zealand, or of any stock exchange in the Commonwealth of Australia or any State of the Commonwealth, or in the United Kingdom, or in respect of which application for such listing has been made:
  - (c) in the purchase or other acquisition of any estate or interest in land, including any buildings or other improvements on the land, or in the execution of any works connected with the subdivision, development, improvement, or maintenance of any such property held by the Trustees, including (without in any way limiting the generality of the foregoing) the construction, alteration, repair, renovation, demolition, or reconstruction of, or addition to, any buildings or other improvements erected or intended to be erected on the land:
  - (d) on deposit with such companies or other bodies corporate as the General Assembly of the Presbyterian Church may from time to time by resolution approve (either particularly or by reference to any class or classes

of companies or bodies corporate) subject to such conditions (if any) as the General Assembly may specify:

- (e) in the purchase or subscription of shares in any flat or office owning company within the meaning of the Companies Amendment Act 1964:
  - (f) in the purchase of bills of exchange accepted, or promissory notes made, by any company or other body corporate in which at the time of investment it would have been permissible for the Trustees to invest in the purchase of ordinary stock or shares, if before the purchase of the bills or notes they are endorsed by a company or body corporate with which at that time it would have been permissible for the Trustees to invest money on deposit:
  - (g) in the purchase of transferable certificates of deposit issued by any trading bank as defined in section 2 of the Reserve Bank of New Zealand Act 1964.
- (3) For the purposes of paragraph (b) of subsection (2), and without restricting the meaning of the term **fully paid**, shares, stocks, bonds, debentures, notes, or other securities shall be deemed to be fully paid if the calls on them are payable by instalments on such terms that all calls shall be paid within 2 years from the date of initial allotment.
- (4) In respect of any investment proposed to be made under any of the provisions of paragraphs (b), (c), and (e) of subsection (2), the Trustees shall first obtain and consider proper advice in writing from a person or persons reasonably believed by the Trustees to be qualified to advise on the investment:  
provided that the advice may be given to the Trustees by any of its officers who is so qualified, and that advice need not be in writing.
- (5) The Trustees may from time to time sell, exchange, vary, or transpose any investments.
- (6) The Trustees may from time to time lease or let any land or any estate or interest in land held by them as an investment, for any period and at such rent or rents and on such terms and conditions as the Trustees think fit.

## **6 Transfer of trust funds**

- (1) Subject to any direction to the contrary in any instrument creating the trust, any trustees or other persons, whether incorporated or not, now or hereafter holding funds on trust for the use or purposes of the Presbyterian Church of New Zealand or any congregation or organisation connected with it, or of that Church or congregation or organisation and any other body of persons jointly, may transfer the whole or any part of such trust funds to the Trustees to be held by them as trustees thereof.
- (2) Except so far as a contrary intention is expressed in any instrument creating the trust, the Trustees shall hold any funds transferred to them under subsection (1) with the powers conferred by, and subject to the provisions of, the principal Act

and this Act, notwithstanding that the powers of investment conferred on the Trustees by the principal Act and this Act are wider than the powers conferred on the first-mentioned trustees or persons by any instrument creating the trust.

- (3) Any such trustees or persons so transferring the whole or any part of any trust funds to the Trustees shall remain liable for the proper application of the capital and the income of those funds in accordance with any instrument creating the trust, but shall not be liable for any loss of capital occurring by reason of any fall in the capital value of any investment made or retained by the Trustees as trustees or for any reduction of income resulting from expenditure by the Trustees in administration in accordance with the principal Act.

#### **7 Power of Trustees to lend or lease to themselves as trustees in a different capacity**

Notwithstanding any rule of law or practice to the contrary, the Trustees, in their capacity as trustees of any trust property, may—

- (a) in the exercise of their powers to invest on real securities, lend money to themselves, on mortgage, in their capacity as trustees of any other trust property:
- (b) in the exercise of their powers to lease or let any land, lease or let any land vested in them to themselves in their capacity as trustees of any other trust property.

#### **8 Power to join with other persons in lending money on mortgage**

In the exercise of the powers conferred by the Trustee Act 1956 and the principal Act to invest trust funds on real securities, the Trustees may join with any other person or body of persons in lending money on any such security.

#### **9 Power to borrow**

- (1) For the purpose of exercising in relation to the Amalgamated Investment Fund the powers conferred by section 3(2)(c) to purchase any estate or interest in land, or to execute works in connection with the land, the Trustees may from time to time, with the prior consent in each case of the commission appointed by the General Assembly of the Presbyterian Church under section 2 of the Presbyterian Church Property Amendment Act 1930, borrow money by way of mortgage on the security of that estate or interest; but the money so borrowed shall be secured by a mortgage only on the property so purchased or in connection with which the works are to be executed.
- (2) The Trustees may from time to time borrow money or arrange credit by way of overdraft at any bank (whether secured or unsecured) for any purpose that is in the opinion of the Trustees of a temporary nature only; but the total amount of all borrowing or credit under this subsection shall not at any time exceed such sum as the General Assembly of the Presbyterian Church may from time to time specify.

- (3) The powers conferred on the Trustees by this section shall extend to include power, subject to the requirements of this section, so to borrow or arrange credit for the purpose of meeting any debt or liability of the Trustees incurred for any of the purposes of this section, whether secured or unsecured and whether owing or incurred at or before the passing of this Act or subsequently.

**10 Power to approve scheme for alternative application of certain funds**

- (1) This section shall apply to any fund held by the Trustees or any other persons on behalf of any congregation of the Presbyterian Church, being a fund that has been raised, whether before or after the passing of this Act, for any special object or purpose connected with or relating to the congregation, by way of voluntary contributions, or by the sale of goods voluntarily contributed, or as the price of admission to any entertainment, or in any other manner of voluntary contribution, whether or not the money in the fund has been invested pending its application for that object or purpose.
- (2) If it becomes or has become impossible or impracticable or inexpedient to carry out that object or purpose, or the amount available is inadequate to carry it out, or the object or purpose has been effected already, the Trustees, at the request of the congregation, signified by a resolution of the congregation, and with the consent of the Presbytery of the bounds, may by writing approve any scheme for the application or disposal of the fund for some other purpose related to the said congregation.
- (3) Every scheme so approved shall have effect according to its tenor.
- (4) This section shall not apply to any fund in respect of which, before or after the passing of this Act, a scheme has been approved by the Court or the Attorney-General under Part 3 or Part 4 of the Charitable Trusts Act 1957, or in respect of which an application for the approval of a scheme has been or is made to the Court or the Attorney-General under either of those Parts.

**11 Power to act together with other persons**

In the exercise of their powers the Trustees may join with or act in combination or association with any other persons or bodies of persons in doing any act or thing which in the opinion of the Trustees will be for the benefit of any trust administered by them.

**12 Costs of Act**

All costs, charges, disbursements, and expenses of and incidental to the preparation, obtaining, and passing of this Act or otherwise in relation to it shall be paid from the Investment Fund Income Account established under section 3(6) of the Presbyterian Church Property Trustees Empowering Act 1957.

## Presbyterian Church Property Amendment Act 1996

Private Act 1996 No 2

### 1 Short Title

This Act may be cited as the Presbyterian Church Property Amendment Act 1996, and shall be read together with and deemed part of the Presbyterian Church Property Act 1885 (hereinafter referred to as the principal Act).

### 2 Interpretation

In this Act, unless the context otherwise requires, the term **the Trustees** means The Presbyterian Church Property Trustees constituted as a body corporate under section 11 of the principal Act.

### 3 Change of name of Presbyterian Church

- (1) The Presbyterian Church (as recognised by the principal Act) shall, notwithstanding anything in section 4 of the principal Act, be known, as from the commencement of this Act, as the **Presbyterian Church of Aotearoa New Zealand**.
- (2) Every reference to the Presbyterian Church of New Zealand in any other enactment or in any document whatsoever shall hereafter, unless the context otherwise requires, be read as a reference to the Presbyterian Church of Aotearoa New Zealand.

## Part 1

### Variation of church trusts

#### 4 Meaning of trust property

In this Part, **trust property** means any money raised or given, or any real or personal property devised, bequeathed, or given or in respect of which a trust is created, whether before or after the commencement of this Act, and held on behalf of the Presbyterian Church or any part of it by a trustee—

- (a) for any object or purpose directly or indirectly associated with or relating to the Presbyterian Church or the whole or any part of any synod, presbytery, charge, congregation, or mission of the Presbyterian Church; or
- (b) for the purpose of furthering social services, hospital or residential care, or educational needs directly or indirectly associated with or relating to the Presbyterian Church,—

whether or not any such trust property has been invested in real or personal property pending its application for that object or purpose.

## **5 Application of this Part**

- (1) This Part shall not apply to any trust property in respect of which, before or after the passing of this Act, a scheme has been approved by the High Court or the Attorney-General under Part 3 or Part 4 of the Charitable Trusts Act 1957 or an application has been made for such approval and not withdrawn.
- (2) Except as provided in subsection (1), the provisions of this Part are in addition to the provisions of the Charitable Trusts Act 1957 and the provisions of section 10 of the Presbyterian Church Property Amendment Act 1974, to the intent that a trust may be varied under this Part, or under either of the said Acts.

## **6 Scheme for application or disposal of trust property**

If—

- (a) it becomes or has become impossible or impracticable or inexpedient to carry out the object or purpose of the trust on which any trust property is held; or
- (b) the amount of any trust property available is inadequate to carry out the object or purpose on which the trust property is held; or
- (c) the object or purpose on which any trust property is held has been effected already,—

the trustee of the trust property may prepare or cause to be prepared a scheme in writing for the application or disposal of the trust property for some other charitable object or charitable purpose or for a combination of charitable objects or charitable purposes or charitable objects and charitable purposes.

## **7 Submission of scheme to commission or legal adviser**

Every scheme prepared under section 6 shall be submitted by the trustee of the trust property to—

- (a) a commission of the Presbyterian Church, which shall be a commission authorised by the General Assembly to consider applications under this Part and which shall include at least 2 persons having legal qualifications; or
- (b) a legal adviser appointed by the General Assembly.

## **8 Preparation of schemes for application or disposal of trust property**

If a scheme prepared under section 6 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 shall provide for the application or disposal of that trust property for a purpose of a kind specified in section 4 which is also a charitable purpose; and
- (b) the trustee of the trust property in preparing the scheme, and the commission or legal adviser in considering and reporting on the scheme, and

the General Assembly to which the scheme is submitted, shall act in accordance with the rules of law that would be applied by the High Court on an 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.

**9 Statement giving full information**

Every scheme submitted under section 7 shall be accompanied by a statement giving full information about the reasons for the proposed application or proposed disposal of the trust property, together with a copy of the trust instrument (if any).

**10 Notice of scheme**

On receipt of the scheme, the commission of the Presbyterian Church or the legal adviser to whom the scheme is submitted shall direct the trustee of the trust property as to the person or persons (if any) who shall be served with notice of the scheme and in what manner (if any) public notice of the scheme shall be given.

**11 Right to object or to make representations**

Any notice served or given under section 10—

- (a) shall state that any person may, within 60 days after the receipt or publication of the notice,—
  - (i) lodge with the commission or legal adviser written objections to the scheme; or
  - (ii) make written representations concerning the scheme to the commission or legal adviser; and
- (b) shall specify an address to which any such written objection or written representation may be sent within 60 days after the receipt or publication of the notice.

**12 Powers and duties of commission or legal adviser**

- (1) The commission or legal adviser may, if it or the legal adviser thinks fit, after considering the scheme and any objections or representations made in respect of the scheme, remit the scheme to the trustee of the trust property for consideration of any amendments the commission or legal adviser may suggest.
- (2) Subject to sections 13 and 14, the commission or legal adviser—
  - (a) shall report on the scheme with such amendments (if any) as the trustee of the trust property may accept; and
  - (b) shall submit to the General Assembly—
    - (i) the scheme; and

- (ii) the report made by the commission or legal adviser on the scheme; and
- (iii) any objections or representations made in respect of the scheme.

**13 Notice to Attorney-General where trust is for charitable purpose**

Where 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, the commission or legal adviser shall, before reporting on the scheme under section 12, send to the Attorney-General written notice of the scheme, together with copies of the statement and trust instrument referred to in section 9.

**14 Objections by Attorney-General**

- (1) The commission or legal adviser shall, in reporting on the scheme under section 12, have regard to any objections that are given to the commission or the legal adviser by the Attorney-General within 90 days after the date on which the notice under section 13 is given to the Attorney-General.
- (2) If the Attorney-General objects to the scheme on the ground that the scheme is not one that should be approved by the Court under Part 3 of the Charitable Trusts Act 1957, the scheme shall not be approved under this Part.

**15 Approval of scheme**

Subject to sections 13 and 14, if the scheme is approved by the General Assembly, it shall have effect according to its tenor, notwithstanding the terms of any instrument by which the trust was created.

**Part 2**  
**Orphanage trusts**

**16 General application of this Part**

- (1) This Part applies to the following trust funds:
  - (a) all trust funds that, at the commencement of this Act, are vested in the Trustees or in other trustees—
    - (i) for the purposes of Presbyterian orphanages or children’s homes in New Zealand; or
    - (ii) for the care, welfare or benefit of persons being cared for or formerly cared for in Presbyterian orphanages or children’s homes in New Zealand; and
  - (b) any trust funds that, after the commencement of this Act, are received or held by the Trustees or other trustees for any of the purposes specified in paragraph (a).
- (2) This Part shall not apply where there is no general charitable intention in the trust or where the trust is not charitable.

- (3) This Part applies whether the instrument creating the relevant trust was executed before or after the passing of this Act.

### **17 Orphanage trusts**

- (1) Notwithstanding the terms of any trust, but subject to subsection (2), every trust fund to which this Part applies that is held by the Trustees shall be held and administered for the welfare of children in New Zealand.
- (2) Where any trust fund to which this Part applies is held by the Trustees for the purposes of or in connection with a specific Presbyterian orphanage or children's home, subsection (1) shall apply in relation to that trust fund only where it is impossible or impracticable or inexpedient to give effect to those original purposes.

### **18 Power to transfer trust funds and properties**

- (1) Any trustee or other person, whether incorporated or not, who, at the commencement of this Act or after the commencement of this Act, hold funds or properties on trust for any of the purposes specified in section 16 may pay or transfer the whole or any part of any such funds or properties to the Trustees or to the appropriate incorporated social service organisation or organisations of the Presbyterian Church in the area concerned to be held by the Trustees or by such incorporated social service organisation or organisations as trustee or trustees thereof.
- (2) Where any funds or property are, under subsection (1), paid or transferred to the Trustees or to any such incorporated social service organisation or organisations, the Trustees or the incorporated social service organisation or organisations may apply the funds or property so paid or transferred as if,—
- (a) in the case of the Trustees, the funds or property were funds or property held by the Trustees under section 17; and
- (b) in the case of the incorporated social service organisation or organisations, that organisation or those organisations, as the case may be, were the Trustees and the funds or property were held by the Trustees under section 17.
- (3) Subsection (2) shall have effect notwithstanding that the powers of application conferred by this Act in relation to the funds or property transferred are wider than the powers conferred on the transferor by any instrument creating the trust.
- (4) The Trustees may invest and amalgamate funds transferred to the Trustees under subsection (1) with other trust funds held by the Trustees in the Amalgamated Investment Fund established under the Presbyterian Church Property Trustees Empowering Act 1957.
- (5) No trustee or other person who pays or transfers, under subsection (1), the whole or any part of any funds or properties shall remain liable for the proper

application of the capital and income of those transferred funds or properties in accordance with any instrument creating the trusts, but the Trustees or other transferee shall, subject to the modifications made to the trusts by this Act, become liable for the proper application and administration of the capital and income of those funds or properties in accordance with any instrument creating the trusts.

**19 Power of the Trustees to act with other persons**

The Trustees may, in the exercise of their powers under sections 17 and 18, 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 Trustees, will be for the benefit or the welfare of children in New Zealand.

## Reprints notes

### **1** *General*

This is a reprint of the Presbyterian Church Property Act 1885 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*

Land Transfer Act 2017 (2017 No 30): section 250

Presbyterian Church Property Amendment Act 1996 (1996 No 2 (P))

Presbyterian Church Property Amendment Act 1974 (1974 No 7 (P))

Presbyterian Church Property Amendment Act 1970 (1970 No 6 (P))

Presbyterian Church Property Amendment Act 1963 (1963 No 3 (P))

Presbyterian Church Property Act 1885 Amendment Act 1914 (1914 No 1 (P))