

**Reprint
as at 12 November 2018**



Charitable Trusts Act 1957

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Commencement see section 1(2)

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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.

This Act is administered by the Ministry of Justice.

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Enactments repealed

An Act to consolidate and amend certain enactments of the Parliament of New Zealand relating to charitable trusts

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title and commencement

- (1) This Act may be cited as the Charitable Trusts Act 1957.
- (2) This Act shall come into force on 1 January 1958.

2 Interpretation

In this Act, unless the context otherwise requires,—

charitable purpose means every purpose which in accordance with the law of New Zealand is charitable; and, for the purposes of Parts 1 and 2, includes every purpose that is religious or educational, whether or not it is charitable according to the law of New Zealand:

provided that in Part 4 the term charitable purpose has the meaning specified in section 38

court means the High Court of New Zealand, and includes a Judge of that court

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

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

2A Principal Act to bind the Crown

This Act shall bind the Crown.

Compare: Recreational Charities Act 1958 s 5 (UK)

Section 2A: inserted, on 2 October 1963, by section 2 of the Charitable Trusts Amendment Act 1963 (1963 No 21).

Part 1

Vesting of property

3 Property to vest in trustees or their successors

- (1) Where any real or personal property has been or is hereafter acquired by or on behalf of any religious denomination, congregation, or society, or any body of persons associated for any charitable purpose, and the conveyance or other assurance of that property has been or is taken to or in favour of trustees to be from time to time appointed, or any parties named in the conveyance or other assurance, or subject to any trust for any such denomination or congregation or society or body of persons, or for the individuals comprising the same, the conveyance or other assurance shall not only vest the property thereby conveyed or otherwise assured in the parties named therein, but shall also effectually vest the same in their successors in office for the time being and the continuing trustees (if any) jointly, or if there are no such continuing trustees, then in their successors in office for the time being chosen and appointed in the manner provided or referred to in the conveyance or other assurance, or in any separate deed or instrument, declaring the trusts thereof; or if no mode of appointment is

therein provided or referred to, or if the power of appointment has lapsed, then in such manner as may be agreed upon by such denomination or by a body constituted to represent them, or by such congregation, society, or body of persons.

- (2) The said property shall be so vested without any conveyance or other assurance whatsoever upon the same trusts and with and under and subject to the same powers and provisions as are contained or referred to in the conveyance or other assurance, or in any separate deed or instrument upon which the property is held so far as the same may at the time of vesting be subsisting and still capable of taking effect, anything in the conveyance or other assurance or in any separate deed or instrument to the contrary notwithstanding.
- (3) Nothing in this section shall restrict the effect of any appointment of new trustees or of any conveyance or other assurance or vesting of any property.

Compare: 1908 No 164 s 2

4 Evidence of appointment of trustees

- (1) For the purpose of preserving evidence of every appointment of new trustees to which section 3 applies and of the persons in whom any estate or interest in property from time to time becomes legally vested, every such appointment shall be made to appear by a memorandum under the hand of the chairman for the time being of the meeting at which the appointment was made, and shall be executed either in the presence of that meeting or at any time after that meeting, and attested by 2 or more witnesses.
- (2) Any such memorandum may be in the form or to the effect of Schedule 1, or as near thereto as circumstances will allow, and may be given and shall be received as evidence in all courts and proceedings in the same manner and on the like proof as deeds, and shall be evidence of the truth of the several matters therein stated.
- (3) Every memorandum made under this section of an appointment of new trustees must, if it affects land under the Land Transfer Act 2017, be lodged with the Registrar-General of Land; and, as regards that land, the appointment has no operative effect until the memorandum or a copy of it has been certified by the Registrar-General of Land.

Compare: 1908 No 164 s 3

Section 4(3): replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

5 Transfer of properties

Where any property is vested in or held by any person in trust for or for the benefit (directly or indirectly) of any body or corporation, or for the maintenance and support of the officers or members of any body or corporation, whether or not the trust or purpose appears upon the face of the conveyance or other instrument under which the property is held and whether or not the trust

is for any charitable purpose, it shall be lawful for the person to convey or transfer the property so held to such trustees as the body or corporation directs or appoints or (in the case of a corporation) to the corporation.

Compare: 1908 No 164 s 10

Part 2

Incorporation of trust boards

6 Interpretation

In this Part, unless the context otherwise requires,—

Assistant Registrar means an Assistant Registrar of Incorporated Societies under the Incorporated Societies Act 1908

board means any trustees or society incorporated as a board under this Part

Registrar means the Registrar of Incorporated Societies under the Incorporated Societies Act 1908; and includes an Assistant Registrar.

7 Trustees may apply for incorporation

- (1) The trustees of any trust which is exclusively or principally for charitable purposes may apply to the Registrar in accordance with this Part for the incorporation of the trustees as a board under this Part.
- (2) No such application shall be made by any trustees if the trustees are already incorporated under any other Act or otherwise, and no such application shall be made by the trustees for the general purposes of any society—
 - (a) if the society is itself incorporated under this Part or under any other Act or otherwise:
 - (b) unless they are authorised to do so by the society.
- (3) Every such application for incorporation shall be in form 1 of Schedule 2, or to the like effect and shall be signed by a majority of the trustees.

Compare: 1908 No 164 s 5

8 Society may apply for incorporation

- (1) Any society which exists exclusively or principally for charitable purposes may apply to the Registrar in accordance with this Part for the incorporation of the society as a board under this Part.
- (2) No such application shall be made by any society—
 - (a) if the society is already incorporated under any other Act or otherwise:
 - (b) if the trustees for the general purposes of the society are themselves incorporated under this Part or any other Act or otherwise:
 - (c) unless the application is authorised by the society.

- (3) Every such application for incorporation shall be in form 2 of Schedule 2, or to the like effect, and shall be signed by not less than 5 members of the society or by a majority of the trustees of the society.

Compare: 1908 No 164 s 5

9 Manner in which society may authorise application

For the purposes of sections 7 and 8, an application shall be deemed to be authorised by a society, if—

- (a) it is authorised by a majority of the members of that society; or
- (b) a resolution authorising the making of the application is passed by a majority of those present at a meeting of that society, and the Registrar is satisfied that such notice of intention to hold that meeting and of its purpose was given as may be reasonable in the circumstances; or
- (c) the application is authorised by the rules of the society or by any other means provided in those rules.

10 Applications for incorporation

- (1) Each subscriber to an application for incorporation must add the subscriber's name and address to the subscriber's signature.
- (2) Every application for incorporation under this Part shall be accompanied by—
 - (a) a copy (certified by one of the subscribers to the application as a correct copy) of the relevant parts of all wills, declarations of trust, and other documents (if any) showing the general purposes of the trustees or society making the application and the trusts on which the applicant or applicants hold any property that is vested in the applicant or applicants as such and is not held for the general purposes of the applicant or applicants;
 - (b) a statutory declaration made by one of the subscribers to the application setting forth any trusts on which the applicant or applicants hold any property, being trusts not set out in any document or copy of a document accompanying the application;
 - (c) in any case where the application for incorporation is made by a society or by the trustees of a society—
 - (i) a copy of the rules and other documents (if any) providing for the constitution of the society, certified by one of the subscribers to the application as a correct copy of the then current rules and documents, or (where there are neither any such rules nor any such documents) a statutory declaration made by one of the subscribers to the application setting forth the purposes of the society, the manner in which persons become members or cease to be members thereof, and the manner in which the society operates;

- (ii) a statutory declaration made by one of the subscribers to the application to the effect that the application is authorised by the society, and specifying the mode in which it is so authorised.
- (3) If the Registrar considers that any documents accompanying an application do not disclose sufficient information regarding the trusts on which any property is held by the applicant or applicants, or regarding the purposes and constitution of any society, he may refuse to register the trustees or society as provided in this Part until such further information as he requires is supplied to him.
- (4) Original documents may in any case accompany any such application instead of copies, and the provisions of subsection (5) of section 29 shall thereupon apply in respect of the documents.

Compare: 1908 No 212 s 7

Section 10(1): replaced, on 20 September 2007, by section 4 of the Charitable Trusts Amendment Act 2007 (2007 No 45).

11 Registration of boards

- (1) The Registrar, on being satisfied that the purposes of the trust or society (as the case may be) are exclusively or principally charitable, and that the procedural requirements of this Part have been observed, shall do the following things:
 - (a) enter the name of the board in the register kept by him under this Part, together with particulars as to whether trustees or a society constitute the board, the place of its registered office, and such other particulars as he thinks fit;
 - (b) issue under his seal a certificate that the board has been incorporated under this Part on the date mentioned in the certificate.
- (2) From the date of incorporation mentioned in the certificate of incorporation the board shall be a body corporate, and shall consist of—
 - (a) the persons who are for the time being the trustees of the trust in any case where trustees are incorporated as a board;
 - (b) the persons who are for the time being the members of the society in any case where a society is incorporated as a board.

Compare: 1908 No 212 s 8

12 Evidence of incorporation

Every certificate of incorporation issued under the seal of the Registrar shall be sufficient evidence, in the absence of proof to the contrary, that the board therein named was incorporated on the date specified in the certificate, and that the procedural requirements of this Part have been observed, but shall not be evidence that the purposes of the trust or society are exclusively or principally charitable.

Compare: 1908 No 164 s 6

13 Effect of incorporation

Every board shall have perpetual succession and a common seal, and (subject to this Act and to the rules and other documents providing for the constitution of the board) shall be capable of holding real and personal property of whatsoever nature and whether situated in New Zealand or elsewhere, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

Compare: 1908 No 164 s 7

14 Vesting of property

- (1) All property held by the trustees of any such trust or by any such society shall immediately upon incorporation of the trustees or society as a board vest without transfer, conveyance, or assignment in the board for the same purposes, with the same powers, and upon and subject to the same trusts, contracts, and equities as then affect the same.
- (2) Where any estate or interest in, or any mortgage or charge on, any land under the Land Transfer Act 2017 is vested in a board by virtue of this section, the Registrar-General of Land shall, on receiving a written application under the common seal of the board, register the board as proprietor of that estate, interest, mortgage, or charge.

Compare: 1908 No 164 s 9

Section 14(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

15 Name of board

- (1) No trustees or society shall be incorporated under a name which is identical with that of any other board, or of any company carrying on business in New Zealand (whether registered in New Zealand or not) or of any other body corporate established or registered in New Zealand under any Act, or which so nearly resembles that name as to be calculated to deceive, except where the other board, company, or body corporate, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the board by that name will not be contrary to the public interest.
- (2) The name of a board need not include—
 - (a) the words “Trust Board”;
 - (b) any of the following words, namely, “Trust”, “Board”, “Society”, and “Incorporated”.

Compare: 1908 No 212 s 11; 1955 No 63 s 31(1)(a)

16 Change of name

- (1) In any case where a society is incorporated as a board, or where the trustees of a society are incorporated as a board, the board may, pursuant to a resolution of

the society passed at a general meeting, apply to the Registrar to change the name under which the board is registered.

- (2) In any other case where trustees are incorporated as a board, the board may, pursuant to a resolution passed at a meeting of the board, apply to the Registrar to change the name under which it is registered.
- (3) Where a board applies to the Registrar under this section to change the name under which it is registered and the Registrar approves of the change, the Registrar shall enter the new name in the register in place of the former name, and shall alter the certificate of incorporation to meet the circumstances of the case.
- (4) A change of name by a board under this section shall not affect any rights or obligations of the board, or render defective any legal proceedings by or against the board, and any legal proceedings that may have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

Compare: 1955 No 63 s 32

17 Right to appeal to court

- (1) Any person dissatisfied with any decision of the Registrar that trustees are not to be registered under this Act, or that a society is not to be so registered, or that a name or change in the name of any board is not to be approved or registered, may appeal to the court against that decision.
- (2) Notice of every such appeal shall be filed in the court and served upon the Registrar within 28 days after the day on which the decision appealed against was given.
- (3) If in any case the appellant does not prosecute his appeal with due diligence, the court, on application made by the Registrar or any person interested, may dismiss the appeal and make such order as to costs as it thinks proper.

18 Service on a board

Any notice or legal process shall be deemed to be served upon a board if left at its registered office or if sent through the post in a registered letter addressed to the board at that office.

19 Form of contracts

- (1) Contracts on behalf of a board may be made as follows:
 - (a) a contract which if made by private persons would be by law required to be by deed may be made on behalf of the board in writing under the common seal of the board, attested in such manner as may be provided in the rules or other documents providing for the constitution of the society that is incorporated as the board or of which the members of the board are the trustees, or (in the absence of any such provision) attested by at least 2 of the trustees who are incorporated as the board or by at

least 2 members of the committee or other governing body of the society that is incorporated as the board:

- (b) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the board in writing signed by any person acting under its authority, express or implied:
 - (c) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the board by any person acting under its authority, express or implied.
- (2) A contract made according to this section shall be effectual in law, and shall bind the board and its successors and all other parties thereto.

Compare: 1908 No 164 s 11; 1955 No 63 s 42

20 Presumption of validity of acts of trustees, etc

All acts or deeds done or made by any person acting in good faith as one of the trustees who for the time being constitute a board, or as one of the committee or governing body for the time being of a society which constitutes a board, shall be valid notwithstanding any defect that may afterwards be found in his appointment; and the signature of any person purporting to act as one of those trustees or as a member of that committee or governing body shall, in the absence of proof to the contrary, be sufficient evidence of his being one of those trustees or a member of that committee or governing body, as the case may be.

Compare: 1908 No 164 s 12

21 Powers in respect of property

- (1) Without restricting the powers that are or may be conferred on any board by or under the Trustee Act 1956 or this Act or any other Act or otherwise howsoever, it is hereby declared that any board may,—
- (a) notwithstanding any trusts that may affect its property, with the consent of the court, dedicate all or any part of its property for any public purpose:
 - (b) notwithstanding any trusts that may affect its property, sell or exchange any part of its property for any purpose upon such terms as it deems expedient:

provided that no property subject to any trust shall be sold or exchanged in exercise of the power conferred by this paragraph without the consent of the court in any case where it is of the essence of the trust that the particular property should be used for the purpose of the trust:
 - (c) subject to the rules or other documents providing for the constitution of the board, purchase any property, whether situated in New Zealand or

elsewhere, and apply any money for the time being held by the board for or towards any such purpose; and any property so purchased shall be held upon the same trusts as affected the money applied in payment for the property.

- (2) Any money or other property received in consequence of any such dedication or sale or exchange shall be held upon the same trusts as affected the property so dealt with, and any such money may be invested in any investments for the time being authorised by the Trustee Act 1956 for the investment of trust funds.

Compare: 1908 No 164 s 13; 1928 No 55 s 2

22 Power to incorporate for charitable purposes under other Acts

Nothing in this Act shall prevent any company, society, or corporation from being incorporated under any other Act or otherwise for any religious, educational, or other charitable purpose, or from including any such purpose among its objects:

provided that no board incorporated under this Part shall be incorporated under any other Act.

23 New trusts, and alterations of rules, trusts, or registered office

- (1) If any variation is made in the trusts on which any board holds any property, or if any additional property becomes vested in any board on trusts not completely shown in the declarations and the copies of the relevant parts of wills and declarations of trust and other documents already lodged with the Registrar, then, within 1 month from the date of the variation or vesting, there shall be lodged with the Registrar—
- (a) a copy (certified by one of the trustees for the time being constituting the board or by a member of the committee or governing body of the society constituting the board, as a correct copy) of the relevant parts of every scheme, order, will, declaration of trust, and other document which (when read where necessary with the copies and documents already lodged with the Registrar) show the trusts as varied and the trusts on which the additional property is vested in the board; and
 - (b) a statutory declaration by any such trustee or member setting forth the variation of the trusts or the trusts on which the additional property is held so far as they are not shown in any such scheme, order, will, declaration of trust, or other document.
- (2) If any alteration is made in the rules or other documents providing for the constitution of any board, and the alteration is made in accordance with section 61 and affects the trusts on which any property is held or is to be held, or if any board desires to alter the address of its registered office, notice of the alteration or desired alteration shall be given to the Registrar within 1 month from the date thereof. Where any board gives notice under this subsection of its desire to

alter the address of its registered office and specifies a new address for its registered office with sufficient particularity to enable documents to be served by hand and served by post, the Registrar shall forthwith alter the registered address accordingly.

- (3) If in any case the requirements of this section are not complied with within any such period of 1 month, each of the trustees for the time being incorporated as the board, or each member of the committee or other governing body of the society incorporated as the board, and each officer of the board, commits an offence and shall be liable on conviction to a fine not exceeding 1 shilling for every day thereafter during which the default continues.
- (4) Where any board has been incorporated before the commencement of this Act, the board may at any time lodge with the Registrar all or any of the documents or copies and declarations which it would be required to lodge with the Registrar on an application for incorporation made after the commencement of this Act; and (if the Registrar so requests) the memorial and all other documents and copies which were filed in connection with the incorporation of the board may be transferred to the Registrar.

Section 23(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

24 Voluntary liquidation of society as a board

- (1) In any case where a society is incorporated as a board, the board may be put into liquidation if at a general meeting of its members it passes a resolution appointing a liquidator, and the resolution is confirmed at a subsequent general meeting called for that purpose and held not sooner than the 28th day and not later than the 42nd day after the date on which the resolution to be confirmed was passed.
- (2) Subject to this Act and to any regulations made under this Act, Parts 16 and 17 of the Companies Act 1993, with such modifications as may be necessary, shall apply to the liquidation as if the resolution had been passed under section 241(2)(a) of that Act.

Section 24: replaced, on 1 July 1994, by section 2 of the Charitable Trusts Amendment Act 1993 (1993 No 112).

25 Liquidation of a board by court

- (1) A board may be put into liquidation by the appointment by the court as liquidator of a named person or an Official Assignee for a named district if the court is satisfied that it is just and equitable that the board should be put into liquidation.
- (2) Any application to the court to put a board into liquidation may be presented by—
 - (a) the Attorney-General; or
 - (b) the board; or

- (c) a member; or
 - (d) a creditor; or
 - (e) the Registrar; or
 - (f) any other person who, in the opinion of the court, should make the application.
- (3) All costs incurred by the Attorney-General or the Registrar in making the application shall, unless the court otherwise orders, be a first charge on the assets of the board.
- (4) Subject to this Act and to any regulations made under this Act, Parts 16 and 17 of the Companies Act 1993 shall apply, with such modifications as may be necessary,—
- (a) to the application for the appointment of a liquidator as if the application was an application under section 241(2)(c) of that Act; and
 - (b) to the liquidation as if the liquidator had been appointed under section 241(2)(c) of that Act.

Section 25: replaced, on 1 July 1994, by section 2 of the Charitable Trusts Amendment Act 1993 (1993 No 112).

26 Dissolution by Registrar

- (1) The Registrar may make a declaration (a **declaration of dissolution**) that a board is dissolved, if the Registrar is satisfied that the board—
- (a) is no longer carrying on its operations; or
 - (b) has been registered because of a mistake of fact or law.
- (2) The Registrar must ensure that, as soon as practicable after it is made, the declaration of dissolution is—
- (a) recorded in the register; and
 - (b) published—
 - (i) in the *Gazette*; and
 - (ii) on an Internet site maintained by, or on behalf of, the Registrar, at all reasonable times, for a period of not less than 20 working days.
- (3) A society is dissolved at the time the declaration of dissolution is recorded in the register, with effect from the date of the declaration.
- (4) If the Registrar is satisfied that a declaration of dissolution was made in error and should be revoked, the Registrar may make a declaration (a **declaration of revocation**) that the declaration of dissolution is revoked.
- (5) The Registrar must ensure that, as soon as practicable after it is made, the declaration of revocation is—
- (a) recorded in the register; and
 - (b) published—

- (i) in the *Gazette*; and
 - (ii) on an Internet site maintained by, or on behalf of, the Registrar, at all reasonable times, for a period of not less than 20 working days.
- (6) At the time the declaration of revocation is recorded in the register the society is revived, as if no dissolution had taken place, with effect from the time that the society was dissolved.

Section 26: replaced, on 7 July 2010, by section 4 of the Charitable Trusts Amendment Act 2010 (2010 No 51).

26A Registrar may inquire whether board still carrying on operations

- (1) It is sufficient to satisfy the Registrar, for the purposes of section 26(1), that a board is no longer carrying on its operations if—
 - (a) the Registrar sends a registered letter to the board, addressed to the board at its registered office, inquiring whether it is still carrying on its operations; and
 - (b) either—
 - (i) the Registrar does not receive a reply to the registered letter within 6 months after the date that the letter is posted; or
 - (ii) the letter is not delivered and is returned to the Registrar.
- (2) Nothing in this section prevents the Registrar from satisfying himself or herself in any other manner that the board is no longer carrying on its operations.

Section 26A: inserted, on 7 July 2010, by section 4 of the Charitable Trusts Amendment Act 2010 (2010 No 51).

27 Distribution of surplus assets

On the liquidation of a board or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall be disposed of as the court directs.

Section 27: replaced, on 1 July 1994, by section 3 of the Charitable Trusts Amendment Act 1993 (1993 No 112).

28 Register of boards and seal of Registrar

- (1) The Registrar shall keep a register in which shall be recorded all matters required by this Act or by any regulations under this Act to be recorded by the Registrar.
- (1A) The register may be kept in any manner that the Registrar thinks fit, including, either wholly or partly, by means of a device or facility—
 - (a) that records or stores information electronically or by other means; and
 - (b) that permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- (2) The seal of the Registrar may be used for the authentication of any documents required for the purposes of this Part.

Section 28(1A): inserted, on 7 July 2010, by section 5 of the Charitable Trusts Amendment Act 2010 (2010 No 51).

29 Inspection, production, and evidence of documents kept by Registrar

- (1) Any person may inspect the documents kept by the Registrar on payment of such fees as may be prescribed.
- (2) Any board may, on payment of the prescribed fee and on proof that every certificate of the incorporation of the board which has previously been issued has been lost or destroyed, require the Registrar to issue under his seal a further certificate of incorporation in respect of the board.
- (3) Any person may, on payment of the prescribed fee, require a copy of or extract from the register or any document lodged with the Registrar under this Act to be given or certified by the Registrar under his hand and seal.
- (4) No process for compelling the production of any document kept by the Registrar shall issue from any court, except with the leave of that court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the court.
- (5) A copy of or extract from any document kept by or lodged with the Registrar under this Part, certified to be a true copy or extract under the hand and seal of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.
- (6) At any time while there are no regulations prescribing the fees payable under this section, or so far as no such fees are prescribed by any regulations, the fees so payable shall be the same as those payable under the corresponding provisions in section 363 of the Companies Act 1993. All fees paid to the Registrar under this Act shall be paid into a Crown Bank Account, and shall form part of a Crown Bank Account.

Compare: 1955 No 63 ss 8(3), 9

Section 29(6): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 29(6): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

30 Exemption from fees

Except as provided in section 29, no fee shall be payable to the Registrar in respect of any document made or thing done under or for the purposes of this Part.

Part 3

Schemes in respect of certain charitable trusts

31 Interpretation

In this Part, unless the context otherwise requires,—

Registrar, in relation to any scheme, means the Registrar of the High Court in whose office the scheme is filed

trustees includes executors or administrators, and any person or persons, body corporate, or association in whom any property is vested that is or may become subject to this Part.

Compare: 1908 No 164 s 14; 1928 No 55 s 3

Section 31 **Registrar**: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

32 Property may be disposed of for other charitable purposes

- (1) Subject to the provisions of subsection (3), in any case where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and it is impossible or impracticable or inexpedient to carry out that purpose, or the amount available is inadequate to carry out that purpose, or that purpose has been effected already, or that purpose is illegal or useless or uncertain, then (whether or not there is any general charitable intention) the property and income or any part or residue thereof or the proceeds of sale thereof shall be disposed of for some other charitable purpose, or a combination of such purposes, in the manner and subject to the provisions hereafter contained in this Part.
- (2) Subject to the provisions of subsection (3), in any case where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and the property or the income which has accrued or will accrue is more than is necessary for the purpose, then (whether or not there is any general charitable intention) any excess property or income or proceeds of sale may be disposed of for some other charitable purpose, or a combination of such purposes, in the manner and subject to the provisions hereafter contained in this Part.
- (3) This section shall not operate to cause any property or income to be disposed of as provided in subsection (1) or subsection (2)—
 - (a) if in accordance with any rule of law the intended gift thereof would otherwise lapse or fail and the property or income would not be applicable for any other charitable purpose:
 - (b) in so far as the property or income can be disposed of under Part 4.
- (4) Subject as aforesaid, this section shall extend to cases where the charitable purpose affecting any property or income is defined by a scheme approved by the court under this Part or otherwise or approved by the Attorney-General under

Part 4, and in any such case the original purpose or purposes may be restored, with or without modifications.

- (5) The provisions of this section shall apply with respect to trusts created, and to schemes approved, before or after the commencement of this Act.

Compare: 1908 No 164 s 15; 1951 No 29 s 2

33 Extension of powers or alteration of mode of administration of trust

In any case where it is made to appear that any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and the administration of the property or income or the carrying out of the trust could be facilitated by extending or varying the powers of the trustees or by prescribing or varying the mode of administering the trust, the powers of the trustees may be extended or varied, and the mode of administering the trust may be prescribed or varied, in the manner and subject to the provisions hereafter contained in this Part:

provided that nothing in this section shall restrict the powers that are or may be conferred on the court or the trustees by or under the Trustee Act 1956 or any other Act or by law.

34 Trustees may prepare a scheme

Where the trustees of any such property or income are desirous that it shall be dealt with subject to this Part, they may prepare or cause to be prepared, in accordance with this Part, a scheme for the disposition of the property or income and for extending or varying the powers of the trustees or for prescribing or varying the mode of administering the trust.

Compare: 1908 No 164 s 16

35 Scheme to be laid before Attorney-General

- (1) Every scheme prepared under this Part shall be submitted to the Attorney-General, together with full information as to all the facts upon which it is proposed to make the disposition set out in the scheme, and with copies of any instruments necessary to explain the scheme so prepared; and the Attorney-General shall, in respect of every such scheme, have the following powers and duties:

- (a) he may remit the proposed scheme to the trustees for consideration of any amendments he may suggest:
- (b) he shall report on the scheme as finally submitted by the trustees after they have considered such amendments (if any) as are suggested by the Attorney-General, and shall deliver the report to the trustees.

- (2) At any time after delivery to them of the report of the Attorney-General, the trustees may apply to the court for approval of the scheme, and on making any such application shall file therewith the scheme and the report of the Attorney-General thereon.

- (3) Every such application shall be filed in the office of the court at or nearest the place where the trustees or the majority of them reside or the property is situated, or, if the property is personal property and the trustees or the majority of them reside out of New Zealand, then in some office of the court specified by the Attorney-General:

provided that any such application may be filed in an office of the court approved by the Attorney-General or the court.

- (4) The application, scheme, and report shall be open for inspection by the public without any fee or charge.

Compare: 1908 No 164 s 17

36 Scheme to be advertised

- (1) Before any such application is considered by the court, notice of the application shall be given as hereafter provided in this section once in the *Gazette*, and at least 3 times with an interval of not less than 6 days between any 2 insertions in 1 newspaper circulating in the judicial district in which is situated the office of the court in which the application has been filed. The first such notice shall be so published not more than 3 months and not less than 1 month before the date proposed for the consideration of the scheme by the court.

- (2) Every such notice shall give particulars of the scheme, shall state the date proposed for the hearing of the application by the court, and shall require any person desiring to oppose the scheme to give written notice of his intention to do so to the Registrar and the trustees and the Attorney-General not less than 7 clear days before that date.

Compare: 1908 No 164 s 18

37 Opposition to scheme

Any person desiring to oppose the scheme shall, not less than 7 clear days before the date proposed for the hearing of the application by the court, give written notice of his intention to oppose the scheme to the Registrar and the trustees and the Attorney-General.

Part 4

Schemes in respect of charitable funds raised by voluntary contribution

38 Meaning of term charitable purpose in this Part

In this Part, unless the context otherwise requires, the term **charitable purpose** means every purpose which in accordance with the law of New Zealand is charitable; and includes the following purposes, whether or not they are beneficial to the community or to a section of the community:

- (a) the supply of the physical wants of sick, aged, destitute, poor, or helpless persons, or of the expenses of funerals of poor persons:
- (b) the education (physical, mental, technical, or social) of the poor or indigent or their children:
- (c) the reformation of offenders, prostitutes, drunkards, or drug addicts:
- (d) the employment and care of discharged offenders:
- (e) the provision of religious instruction, either general or denominational:
- (f) the support of libraries, reading rooms, lectures, and classes for instruction:
- (g) the promotion of athletic sports and wholesome recreations and amusements:
- (h) contributions towards losses by fire and other inevitable accidents:
- (i) encouragement of skill, industry, and thrift:
- (j) rewards for acts of courage and self-sacrifice:
- (k) the erection, laying out, maintenance, or repair of buildings and places for the furtherance of any of the purposes mentioned in this section.

Compare: 1908 No 164 s 31; 1928 No 55 s 3

39 Funds to which this Part applies

This Part is applicable to cases in which money has been raised for any charitable purpose by way of voluntary contribution, 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 has been invested pending application for that charitable purpose.

Compare: 1908 No 164 s 32

40 Property may be disposed of for other charitable purposes

- (1) In any case to which this Part applies—
 - (a) if it becomes impossible or impracticable or inexpedient to carry out the charitable purpose for which the money raised is held, or if the amount available is inadequate to carry out that purpose, or that purpose has been effected already, or that purpose is illegal or useless or uncertain; and
 - (b) if the money has not been entirely applied, and is not in the course of being applied, for the charitable purpose for which it is held at any time after the expiration of 1 year after the contribution or receipt of any part of the money or the sale of any part of the goods—

then, whether or not there is any general charitable intention, the money and the income therefrom or any part or residue thereof shall be disposed of for some other charitable purpose, or a combination of such purposes, in the manner and subject to the provisions hereafter contained in this Part.

- (2) In any case to which this Part applies, if the money raised and the income which has accrued or will accrue therefrom or any residue thereof is more than is necessary to carry out the original charitable purpose, any excess money or income may be disposed of for some other charitable purpose, or a combination of such purposes, in the manner and subject to the provisions hereafter contained in this Part.
- (3) This section shall extend to cases where the charitable purpose for the time being affecting any money or income is defined by a scheme approved by the Attorney-General or the court under this Part or otherwise approved by the court, and in any such case the original purpose or purposes may be restored, with or without modifications.
- (4) The provisions of this section shall apply with respect to money raised, and to schemes approved as aforesaid, before or after the commencement of this Act.

Compare: 1908 No 164 ss 33, 34; 1928 No 55 s 5

41 Extension of powers or alteration of mode of administration of trust

- (1) If in any case it is made to appear that the administration of any money, or income from money, to which this Part applies could be facilitated by extending or varying the powers of the trustees or by prescribing or varying the mode of administering the trust on which the money or income is held, the powers of the trustees may be extended or varied, and the mode of administering the trust may be prescribed or varied, in the manner and subject to the provisions hereafter contained in this Part.
- (2) Nothing in this Part shall restrict the powers that are or may be conferred on the court or the trustees by or under the Trustee Act 1956 or any other Act or by law or restrict the operation of section 86 of the Public Trust Act 2001.

Section 41(2): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

42 Contributor or money holder may proceed under this Part

- (1) In any case to which section 40 or section 41 applies, any contributor of money raised for the charitable purpose or of goods sold to provide money for that purpose, or any holder or trustee of any such money or of any money received as the price of admission to any entertainment or paid in any other voluntary manner for that purpose, may proceed in the manner hereafter set out in this Part.
- (2) In any case where the holder or trustee of any money to which this section applies is an incorporated body of persons, that body may appoint any person to proceed on its behalf under this Part, and the provisions of this Part shall apply to the person so appointed as if he were the holder or trustee of the money.

Compare: 1908 No 164 s 34

43 Convening meeting of contributors

The moving contributor or money holder (in this Part referred to as the convener) may call together a meeting of the contributors of money or goods as aforesaid by advertisement in a form approved by the Attorney-General and in the following manner:

- (a) the advertisement shall identify the money, and shall specify every newly proposed charitable purpose and every proposal for extending or varying the powers of the trustees or of prescribing or varying the mode of administering the trust and shall state the reason for every proposal relating to any new charitable purpose or to the powers of the trustees or the mode of administering the trust:
- (b) the advertisement shall draw attention to the right conferred on contributors by section 49:
- (c) the day, time, and place of meeting shall be mentioned in the advertisement, the day being not less than 1 month from the date of the first advertisement, and the place being the place or the most populous of the places where the money was raised:
- (d) the advertisement shall be inserted in 1 or more of the daily newspapers of large circulation in each locality within which the contributions were received:
- (e) the advertisement shall be inserted at least 3 times with an interval of not less than 6 days between any 2 insertions.

Compare: 1908 No 164 s 35

44 Subsequent advertisement or notice of other newly proposed purpose

Any other contributor may, by advertisement published at least 3 times before the day fixed for the meeting in the newspaper or newspapers in which the original advertisement was published, or by advertisement or notice given or published in the manner approved under subsection (1) of section 50 for the purpose of calling the meeting of contributors, intimate that he will propose at the meeting some charitable purpose or some proposal relating to the powers of the trustees or the mode of administering the trust other than the purpose or proposal mentioned in the first advertisement or notice of the meeting, and that other purpose or proposal shall be distinctly specified in the advertisements published or the notice given under this section.

Compare: 1908 No 164 s 36

45 Proceedings at meetings

The proceedings at the meeting held pursuant to the advertisement or notice shall be conducted in the following manner, that is to say:

- (a) the convener, together with any 2 other persons present claiming to be contributors then and there chosen by a majority of the persons present

and claiming to be contributors, shall form a claim committee for determining the claims of persons to vote as contributors:

- (b) contributors who by letter addressed to the convener establish their claim to the satisfaction of the claim committee may vote by proxy:
- (c) the claims to vote at the meeting having been determined, a list shall be made by the claim committee of the voting contributors, to which may be added by that committee the names of any persons who establish their claims before the conclusion of the proceedings:
- (d) the contributors shall choose a chairman, who shall have an original and a casting vote:
- (e) if any contributor has, by advertisement or notice published or given under section 44, intimated that he will propose a purpose or proposal different from that contained in the advertisement or notice of the convener, the vote of the meeting shall be taken on all the purposes or proposals at once, and that purpose or proposal shall be declared to be adopted for which the greatest number of votes is given:
- (f) any contributor may propose at the meeting that the purpose to which the money shall be applied and the proposal for extending or varying the powers of the trustees or of prescribing or varying the mode of administering the trust shall be one combined of all or any of the following, namely, the existing purpose and the purposes and proposals notified or advertised or any portions thereof, and the meeting may take the same into consideration and vote thereupon at the same time as upon the notified or advertised purposes and proposals:
- (g) if any contributor present at the meeting proposes some other purpose or proposal which has not been duly advertised or notified and to which paragraph (f) does not apply, that purpose or proposal shall not be voted on at the meeting, but the meeting may, if it thinks fit, abstain from voting on the advertised or notified or proposed purposes and proposals and adjourn to a future day not less than 10 days thereafter:
- (h) the proposer of the other purpose or proposal referred to in paragraph (g) shall, not less than 3 days before the day to which the meeting is adjourned, by advertisement published in the newspaper or newspapers in which the original advertisement was published or by like notice, intimate the specific character of the purpose or proposal which he intends to propose at the resumed meeting:
- (i) at the resumed meeting all the purposes and proposals which have been duly notified or advertised or proposed shall be put together to the vote, and that purpose or proposal shall be declared to be adopted for which the greatest number of votes is then given.

Compare: 1908 No 164 s 37

46 Scheme committee

After the determination by the meeting of the purpose or proposal, the meeting shall proceed to choose a scheme committee of 3 contributors, who shall within 2 months from the date of the meeting prepare or cause to be prepared a scheme to give effect to the resolution of the meeting.

Compare: 1908 No 164 s 38

47 Scheme, etc, to be laid before the Attorney-General

The scheme committee shall, within the period of 2 months last mentioned, lay before the Attorney-General—

- (a) a statutory declaration by the convener or the chairman of the meeting detailing the procedure followed and exhibiting a copy of every advertisement and notice and a copy of any minutes of the meeting certified by the chairman thereof:
- (b) if minutes of the meeting are not available or do not set out in full the resolution adopting the purpose or proposal, a copy of the said resolution certified by the chairman:
- (c) the scheme so prepared, signed by each member of the scheme committee, together with a copy of the scheme:
- (d) copies of any other purposes or proposals notified, advertised, or proposed.

Compare: 1908 No 164 s 39

48 Powers and duties of Attorney-General

- (1) The Attorney-General shall in respect of every such scheme have the following powers and duties:
 - (a) he may remit the proposed scheme to the scheme committee for consideration of any amendments he may suggest:
 - (b) he shall either approve the scheme as finally submitted by the scheme committee after the committee has considered all amendments suggested by the Attorney-General or he shall report on the scheme; and thereupon he shall deliver his approval or report and the scheme to the committee.
- (2) A verified copy of every scheme approved by the Attorney-General, and of the Attorney-General's approval, shall be filed by the committee in the office of the court at or nearest to the place where the meeting was held; and an approval of a scheme by the Attorney-General under this section shall have the same effect as an approval of the scheme by the court.
- (3) An office copy of any scheme approved by the Attorney-General, and of his approval, shall be sufficient proof of the scheme and approval in the absence of proof to the contrary.

- (4) At any time after delivery to the committee of any such report, the committee may apply to the court for approval of the scheme, and on making any such application shall file therewith the scheme and the report of the Attorney-General thereon.
- (5) Every scheme, approval, report, and application which is filed as aforesaid in the office of the court shall be open to inspection by the public without any fee or charge.

49 Contributor may get back money before date fixed for first meeting of contributors

In any case where any advertisement has been published or any notice has been given in accordance with this Part specifying a newly proposed charitable purpose for which any money to which this Part applies may be used, any contributor of any part of the money may, at any time after the publication of the advertisement or the giving of the notice and before the day mentioned in the advertisement or notice for the meeting, or at any time within the period fixed by a written notification to that contributor given under subsection (3) of section 50, but not afterwards, demand from that holder the amount of his contribution or a rateable proportion thereof out of the residue left after deductions made for reasonable expenses and expenditure in pursuance of the original purpose and proposals; and, subject to the contributor satisfying the money holder of the fact and amount of his contribution, the money holder shall thereupon pay that amount or proportion to that contributor.

Compare: 1908 No 164 s 48

50 Attorney-General or court may dispense with meeting of contributors

- (1) The Attorney-General or the court may in any case dispense with advertisement in accordance with section 43, and may authorise the convener to call the meeting of contributors by notice or advertisement given to the contributors or published in a form and manner approved by the Attorney-General or the court. Irrespective of whether the scheme which is prepared under this Part in respect of the money is approved by the Attorney-General or submitted to the court for approval, any such dispensation and authorisation may be given by either the Attorney-General or the court at any time either before or after the date on which the notice is given or the advertisement is published or the date on which the meeting is held:

provided that no such dispensation or authorisation may be given by the Attorney-General in respect of any such scheme after an application has been made to the court for approval thereof.

- (2) Without restricting the provisions of subsection (1), but subject to the provisions of subsection (3), in any case where, in connection with any scheme or proposed scheme under this Part, the Attorney-General or the court considers that no useful purpose proportionate to the trouble and expense involved would be served by holding a meeting of contributors, or by advertising or giving

notice, in accordance with this Part, the Attorney-General or the court may, on such conditions as he or it thinks fit, dispense with all or any of the requirements of this Part in connection therewith or incidental thereto, and approve the scheme accordingly; and thereupon all the provisions of this Part relating to schemes that have been approved under this Part shall apply to the scheme:

provided that no such dispensation shall be given unless—

- (a) the amount involved is less than 200 pounds; or
 - (b) a period exceeding 5 years has elapsed since the contribution or receipt of any part of the money or the sale of any part of the goods.
- (3) In any case where the holding of a meeting of contributors, or all the requirements of this Part relating to advertising or the giving of notice of the holding of such a meeting, are dispensed with under subsection (2), the scheme shall not be approved under that subsection until—
- (a) due inquiries have been made as to whether there are any living contributors whose names and addresses are known or reasonably ascertainable and who have each made contributions exceeding a total of 10 pounds;
 - (b) every such contributor has been notified in writing of the proposal and of his right under section 49 to get back his contribution or part thereof within such period (being not less than 3 weeks after the date on which he is notified) as may be specified in the notification; and
 - (c) every period so specified has expired.
- (4) Where any written notification has to be given under subsection (3), it may be given—
- (a) by delivering it to the person to whom it has to be given; or
 - (b) by leaving it at the usual or last known place of abode in New Zealand of that person; or
 - (c) by sending it by post in a letter addressed to that person at his usual or last known place of abode, in which case it shall be deemed to have been given at the time at which the letter would have been delivered in the ordinary course of post.

Part 5

Miscellaneous provisions

51 Administration of schemes

- (1) Where any voluntary association has been constituted at any place for any charitable purpose within the meaning of Part 4, and the means for carrying out that purpose are raised by voluntary contributions from time to time, and the business of the association is carried on by office bearers elected by contributors or by a public meeting, it shall be lawful to provide in any scheme

approved under Part 4 that the purposes of the scheme may in whole or in part be carried out, and the funds or parts thereof be administered, by any such voluntary association or by the office bearers for the time being of any such voluntary association.

- (2) Without restricting the foregoing provisions of this section or the power to make any other provision for carrying out the purposes of any scheme or for administering any property, income, or money to which any scheme applies, it is hereby declared that any scheme approved under Part 3 or Part 4 may provide that the purposes of the scheme may in whole or in part be carried out, and that any property, income, or money to which the scheme applies may be administered, by—
- (a) the trustees of any existing trust for any charitable purpose within the meaning of the Part of this Act under which the scheme is approved; or
 - (b) any district health board or the board of trustees of any separate institution under the Hospitals Act 1957; or
 - (c) any corporation, or the governing body of any corporation, which is a trustee of any existing trust for any charitable purpose as defined in the Part of this Act under which the scheme is approved; or
 - (d) Public Trust or any trustees who could be appointed under the Trustee Act 1956.

Compare: 1908 No 164 ss 28, 45, 49

Section 51(2)(b): amended, on 1 January 2001, by section 111(1) of the New Zealand Public Health and Disability Act 2000 (2000 No 91).

Section 51(2)(b): amended, on 1 April 1958, pursuant to section 158(1) of the Hospitals Act 1957 (1957 No 40).

Section 51(2)(d): amended, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

52 Expenses of scheme

Any scheme prepared and approved under this Act may provide that all reasonable expenses of or incidental to preparing, perusing, and advertising the scheme shall be paid out of and be a charge upon the property or income or money affected.

Compare: 1908 No 164 ss 27, 44

53 Jurisdiction of court in respect of schemes

Where application for approval of any scheme is made to the court under Part 3 or Part 4—

- (a) the court may decide what persons shall be heard before it in support of or in opposition to the scheme:
- (b) the court shall have jurisdiction and authority to hear and determine all matters relating to the scheme:

- (c) the court may make an order approving the scheme with or without modification, as it thinks fit.

Compare: 1908 No 164 s 42

54 Approval of scheme or refusal by court to approve scheme to be gazetted

Notice of any approval of a scheme under Part 3 or Part 4, or of the refusal of the court to approve any scheme under Part 3 or Part 4, shall be published by the Registrar of the court in the *Gazette* as soon as practicable after the date thereof, together (in the case of a refusal) with a statement of the reason for the refusal.

Compare: 1908 No 164 ss 24, 25, 42

55 Power to waive non-compliance with procedural requirements

Either the court or the Attorney-General, when approving a scheme, may waive any non-compliance with the procedural requirements of this Act in relation to the scheme.

56 Restrictions on approval of schemes

- (1) No scheme shall be approved by the court under Part 3, or by the court or the Attorney-General under Part 4, unless the court or the Attorney-General is satisfied—
- (a) that the scheme is a proper one, and should carry out the desired purpose or proposal, and is not contrary to law or public policy or good morals; that the scheme can be approved under the Part of this Act under which the approval is sought; that every proposed purpose is charitable within the meaning of that Part of this Act and can be carried out; and that the requirements of that Part of this Act have been complied with in respect of the scheme:
 - (b) in any case where approval is sought under Part 4 and the Attorney-General has not dispensed under section 50 with the holding of a meeting of contributors, that the scheme is designed to give effect to the resolution of the meeting of contributors.
- (2) No refusal of the court or the Attorney-General to approve any scheme under this Act shall prevent fresh steps from being taken in accordance with this Act to obtain the approval to any other scheme in respect of the same property, income, or money.

Compare: 1908 No 164 ss 20, 40, 42

57 No fee payable to Registrar

No fee shall be payable to the Registrar in respect of any application, scheme, report, order, or document filed or made under Part 3 or Part 4.

Compare: 1908 No 164 s 23

58 Inquiries into condition and management of charities

- (1) It shall be lawful for the Attorney-General from time to time, as he in his discretion may think fit, to examine and inquire into all or any charities in New Zealand, including trusts for charitable purposes within the meaning of Part 4, and to examine and inquire into the nature and objects, administration, management, and results thereof, and the value, condition, management, and application of the property and income belonging thereto.
- (2) The Attorney-General may, instead of himself making any such inquiry or examination, from time to time appoint an officer of the Government service or any person to make the inquiry or examination in any specified case or cases; and it shall be lawful for the officer or person so appointed to examine and inquire into the charity or charities in New Zealand to which his appointment relates, including trusts for charitable purposes within the meaning of Part 4, and the nature and objects, administration, management, and results thereof, and to examine and inquire into the value, condition, management, and application of the property and income belonging thereto.
- (3) It shall be the duty of all trustees and persons acting or having any concern in the management or administration of any such charity into which any such examination or inquiry is being made, or of the property or income thereof, on request, to produce to the Attorney-General or to the officer or person making the examination or inquiry all books, papers, writings, and documents in relation to the charity or the property and income thereof, or to the administration, management, value, condition, and application of that property and income, and to answer all questions and give all assistance in connection with the examination or inquiry which they are reasonably able to answer or give. Every person who acts in contravention of or fails to comply in any respect with any provision of this subsection commits an offence and shall be liable on conviction to a fine not exceeding 20 pounds.
- (4) Without restricting the generality of the foregoing provisions of this section, it is hereby declared that for the purposes of any such inquiry or examination the provisions of the Commissions of Inquiry Act 1908 shall, so far as they are applicable and with the necessary modifications, apply as if the Attorney-General or the officer or person were a commission of inquiry appointed under that Act.

Section 58(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

59 Holder of property to transfer it in accordance with scheme

- (1) Where any scheme which has been approved by the court under Part 3 or Part 4, or by the Attorney-General under Part 4, designates any institution, body, or person to hold or receive any property, money, or income under the scheme, the trustees in whom the property, money, or income is vested shall convey, transfer, or pay over the same with all profits or interest which may have accrued

thereon to that institution, body, or person; and upon so doing shall no longer be liable in respect of any express or implied trust upon which they held the property, money, or income, except for wilful negligence or misappropriation thereof.

- (2) The said trustees may execute all instruments and do all acts necessary for giving effect to this section.

Compare: 1908 No 164 ss 29, 46

60 Proceedings to enforce or vary charitable trust or to require a new scheme

- (1) Application may be made to the court by the Attorney-General or any officer of the Government service or person in respect of any property or income subject to a trust for a charitable purpose within the meaning of either Part 3 or Part 4, whether or not a scheme in respect of the property or income or money has been approved by the court under Part 3 or Part 4 or otherwise or by the Attorney-General under Part 4, for an order—

- (a) requiring the trustees to carry out the trusts on which the property or income or money is held, and to comply with the provisions of the scheme (if any):
- (b) requiring any trustee to meet his liability for any breach of trust affecting the property or income or money as the court may direct:
- (c) excluding any purpose from the purposes for which the property or income or money may be used, applied, or disposed of:
- (d) giving directions in respect of the administration of the trust; or in respect of any examination or inquiry under section 58; or of any question to be answered or assistance to be given by any person in connection with any such examination or inquiry:
- (e) directing that on and after the date of the order, or on and after any subsequent date specified in the order, the property or income or money subject to the trust shall not be used or applied or disposed of otherwise than in accordance with a scheme which, after the date of the order, is approved by the court under Part 3 or Part 4 or otherwise, or by the Attorney-General under Part 4.

- (2) Copies of any such application shall be served on the trustees of the property or income or money, and on the Attorney-General.
- (3) On any such application the court may decide what persons shall be heard before it in support of or in opposition to the application.
- (4) On any such application the court may make such order as it thinks fit.

Compare: 1908 No 164 ss 30, 47

61 Alteration of rules of society or corporation not to affect existing trusts

In any case where any company or society or corporation incorporated under this Act or any other Act or otherwise holds any property upon trust for any

charitable purpose defined by reference to the rules or other documents constituting the company or society or corporation, no alteration of the said rules or documents shall vary the trusts for the time being affecting any such property, unless the variation is permitted by the instruments creating the trust and defining its purpose or is approved under Part 3 or Part 4 or is otherwise approved by the court.

61A Trusts for recreational and similar purposes

- (1) Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:

provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

- (2) The requirement of subsection (1) that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—
- (a) the facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and
 - (b) either—
 - (i) those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or
 - (ii) the facilities are to be available to the members of the public at large or to the male or female members of the public at large.
- (3) Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.
- (4) Nothing in this section shall be taken to restrict the purposes which would be regarded as charitable if this section had not been passed.
- (5) Nothing in this section shall—
- (a) apply to make charitable any trust, or validate any disposition, of property if before 26 June 1963 that property or any property representing or forming part of it, or any income arising from any such property, has been paid or conveyed to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust or disposition; or
 - (b) affect any order or judgment made or given before the commencement of this section; or

- (c) require anything properly done before that day, or anything done or to be done in pursuance of a contract entered into before that day, to be treated for any purpose as wrongful or ineffectual.
- (6) Except as provided in subsection (7), nothing in this section shall require anything to be treated for the purposes of any enactment as having been charitable at a time before the date of the commencement of this section, so as to invalidate anything done or any determination given before that date.
- (7) *[Repealed]*
- Compare: Recreational Charities Act 1958 ss 1, 3(1)–(3) (UK)
- Section 61A: inserted, on 2 October 1963, by section 3 of the Charitable Trusts Amendment Act 1963 (1963 No 21).
- Section 61A(7): repealed, on 1 January 1972, by section 101(1) of the Stamp and Cheque Duties Act 1971 (1971 No 51).

61B Inclusion of non-charitable and invalid purposes not to invalidate a trust

- (1) In this section the term **imperfect trust provision** means any trust under which some non-charitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust property or any part thereof is by the trust directed or allowed; and includes any provision declaring the objects for which property is to be held or applied, and so describing those objects that, consistently with the terms of the provision, the property could be used exclusively for charitable purposes, but could nevertheless (if the law permitted and the property was not used as aforesaid) be used for purposes which are non-charitable and invalid.
- (2) No trust shall be held to be invalid by reason that the trust property is to be held or applied in accordance with an imperfect trust provision.
- (3) Every trust under which property is to be held or applied in accordance with an imperfect trust provision shall be construed and given effect to in the same manner in all respects as if—
- (a) the trust property could be used exclusively for charitable purposes; and
- (b) no holding or application of the trust property or any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed.
- (4) This section shall apply to every trust under which property is to be held or applied in accordance with an imperfect trust provision, whether the trust is declared before or after the commencement of this section:

provided that this section shall not apply to any trust declared by the will of any testator dying before, or to any other trust declared before, 26 October 1935 (being the date of the passing of the Trustee Amendment Act 1935), or before 1 January 1957 (being the date of the commencement of the Trustee Act 1956)—

- (a) the trust has been declared to be invalid by any order or judgment made or given in any legal proceedings; or
- (b) property subject to the imperfect trust provision or income therefrom has been paid or conveyed to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust.

Section 61B: inserted, on 2 October 1963, by section 4(1) of the Charitable Trusts Amendment Act 1963 (1963 No 21).

62 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

- (2) *[Repealed]*

Section 62(2): repealed, on 19 December 1989, by section 11 of the Regulations (Disallowance) Act 1989 (1989 No 143).

63 Repeals, amendment, and savings

- (1) The enactments specified in Schedule 3 are hereby repealed.

- (2) *[Repealed]*

- (3) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

- (4) Where any board has been duly incorporated under any provision repealed by this Act or under any corresponding former enactment, and the board is in existence at the commencement of this Act, it shall be deemed to have been duly incorporated under this Act.

- (5) Every certificate in respect of a scheme given by the Attorney-General under Part 4 of the Religious, Charitable, and Educational Trusts Act 1908 shall be deemed to be an approval of the scheme by the Attorney-General under Part 4 of this Act.

Section 63(2): repealed, on 12 October 1978, by section 8 of the Finance Act 1978 (1978 No 56).

Schedule 1

Memorandum of appointment of new trustees

s 4(2)

Memorandum of the choice and appointment of new trustees of the following property, namely [*description of property*], at a meeting of [*description of congregation, society, or body of persons*] duly convened and held for that purpose at or in [*name of place*], on [*date*], and of which [*name of chairman*] was chairman.

Names and description of all the trustees on the constitution or last appointment of trustees made on [*date*]:

Adam Bell, of [*specify*].

Charles Dixon, of [*specify*].

Edward Foster, of [*specify*].

Names and description of all the trustees in whom the said property now becomes legally vested:

First: old continuing trustees—

Charles Dixon, of [*specify*].

Edward Foster, of [*specify*].

Second: new trustees now chosen and appointed—

Benjamin Adams, of [*specify*].

Jonathan Edmonds, of [*specify*].

Dated:

AB,

[*Signature*]

Chairman of the said Meeting.

Signed by the said AB, as chairman of the said meeting in the presence of—

CD

EF

Schedule 2
Forms of application for incorporation as a board

Form 1

Application for incorporation of trustees as a board

s 7(3)

Charitable Trusts Act 1957

- 1 We, being trustees for [*specify*], hereby apply to be incorporated as a board under the provisions of the Charitable Trusts Act 1957.
- 2 We desire the name of the board to be [*state name*].
- 3 The registered office of the board is to be at [*state an address with sufficient particularity for service by hand and service by post of documents thereat*].
- 4 This application is made with the authority of [*state name of society for which the trustees act and mode of authorisation by the society. If there is no such society this should be stated*].
- 5 The said society is not itself incorporated.
- 6 The following documents are attached to this application: [*here insert a list sufficiently describing and identifying each document*].

Dated:

Form 2
Application for incorporation of a society as a board

s 8(3)

Charitable Trusts Act 1957

- 1 We hereby apply for the incorporation of [*specify*] (being a society for charitable purposes which is not yet incorporated and which does not have any incorporated trustees for its general purposes) under the provisions of the Charitable Trusts Act 1957.
- 2 We make this application as [*insert* “the trustees (or the majority of the trustees) for the society” or “members of the society”, *as the case may be*].
- 3 It is desired that upon incorporation the name of the society should be [*insert* “as shown above”, *or as the case may be*].
- 4 The registered office of the society is to be at [*state an address with sufficient particularity for service by hand and service by post of documents thereat*].
- 5 This application is made with the consent of the society given as follows: [*state method of authorisation*].
- 6 The following documents are attached to this application: [*here insert a list sufficiently describing and identifying each document*].

Dated:

Schedule 3
Enactments repealed

s 63(1)

Religious, Charitable, and Educational Trusts Act 1908 (1908 No 164) (1931 Reprint, Vol I, p 774)

Religious, Charitable, and Educational Trusts Amendment Act 1928 (1928 No 55) (1931 Reprint, Vol I, p 790)

Religious, Charitable, and Educational Trusts Amendment Act 1951 (1951 No 29)

Reprints notes

1 *General*

This is a reprint of the Charitable Trusts Act 1957 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
Companies Amendment Act 2013 (2013 No 111): section 14
Criminal Procedure Act 2011 (2011 No 81): section 413
Charitable Trusts Amendment Act 2010 (2010 No 51)
Charitable Trusts Amendment Act 2007 (2007 No 45)
Public Trust Act 2001 (2001 No 100): section 170(1)
New Zealand Public Health and Disability Act 2000 (2000 No 91): section 111(1)
Charitable Trusts Amendment Act 1993 (1993 No 112)
Regulations (Disallowance) Act 1989 (1989 No 143): section 11
Public Finance Act 1989 (1989 No 44): section 83(7)
Constitution Act 1986 (1986 No 114): section 29(2)
Judicature Amendment Act 1979 (1979 No 124): section 12
Finance Act 1978 (1978 No 56): section 8
Stamp and Cheque Duties Act 1971 (1971 No 51): section 101(1)
Charitable Trusts Amendment Act 1963 (1963 No 21)
Hospitals Act 1957 (1957 No 40): section 158(1)