

Reprint  
as at 30 January 2021



## Roman Catholic Bishops Empowering Act 1997

Private Act      1997 No 4  
Date of assent    28 October 1997  
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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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#### Schedule

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#### An Act to—

- (a) constitute Roman Catholic Bishops as corporations sole; and
- (b) provide for the vesting of diocesan and parish property owned by the Roman Catholic Church in New Zealand in the Bishops of dioceses; and
- (c) enable the Bishops to be registered as proprietors of certain land; and
- (d) provide for the variation of certain trusts and for miscellaneous matters; and
- (e) consolidate certain Acts relating to the Bishops

#### Preamble

Whereas it is desirable to—

- (a) constitute Roman Catholic Bishops as corporations sole; and

- (b) provide for the vesting of diocesan and parish property owned by the Roman Catholic Church in New Zealand in the Bishops of dioceses; and
- (c) enable the Bishops to be registered as proprietors of certain land; and
- (d) provide a means of varying certain trusts for religious, charitable, or educational purposes in connection with the Roman Catholic Church where the original purpose is impossible, impracticable, or inexpedient; and
- (e) consolidate various Acts relating to the Bishops:

and whereas the objects of this Act cannot be attained otherwise than by legislation.

## **1 Short Title**

This Act may be cited as the Roman Catholic Bishops Empowering Act 1997.

# **Part 1 Interpretation**

## **2 Interpretation**

In this Act, unless the context otherwise requires,—

**Assistant Bishop** includes a Coadjutor Bishop, a Bishop Auxiliary, a Bishop Assistant, and the equivalent office holder in respect of an Archbishop

**Bishop** means the person from time to time holding the office of Bishop of a diocese in accordance with the laws, practices, or usages of the Church; and includes an Archbishop of a diocese

**Church** means the Roman Catholic Church in New Zealand

**College of Consultors** means that body of priests appointed in accordance with the laws, practices, or usages of the Church which performs the role of consultors to the Bishop

**court** means a court for the time being having jurisdiction to deal with matters of the same nature or similar nature to the one in question

**Diocesan Administrator** means the person on whom the governance of a diocese devolves in accordance with the laws, practices, or usages of the Church on the office of a Bishop becoming vacant or impeded

**Diocesan Finance Council** means the finance council or committee appointed in accordance with the laws, practices, or usages of the Church to assist in the administration of the property of a diocese

**diocese** includes an archdiocese

**land** means any legal or beneficial estate or interest in land of any tenure, and any chattel interest in land

**Parish Finance Council** means the finance council or committee appointed in accordance with the laws, practices, or usages of the Church to assist in the administration of the property of a parish

**property** includes real and personal property, and any estate or interest in any real or personal property, and any debt, and any thing in action, and any other right or interest

**registered proprietor**, in relation to an estate or interest in land, means the person registered as owner of the estate or interest under the Land Transfer Act 2017, or the person entitled to the estate or interest under any instrument under the Deeds Registration Act 1908

**Registrar**, in relation to any land, means the Registrar-General of Land or the Registrar of Deeds.

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

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

### 3 **Meaning of trust property**

In this Act, **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 trust on behalf of the Church for any religious, educational, charitable, or other object or purpose, whether or not the money or property has been invested in real or personal property pending its application for that object or purpose.

### 4 **Archbishop to be same corporation sole as Bishop**

For the purposes of this Act,—

- (a) where a Bishop becomes an Archbishop in the same diocese or is succeeded by an Archbishop in the same diocese, the Archbishop is deemed to be the same corporation sole as the Bishop:
- (b) where an Archbishop becomes a Bishop in the same archdiocese or is succeeded by a Bishop in the same archdiocese, the Bishop is deemed to be the same corporation sole as the Archbishop.

## **Part 2**

### **Bishops to be corporations sole**

#### 5 **Bishops to be corporations sole**

- (1) The Bishop of a diocese is a corporation sole, with perpetual succession and a seal of office, and has and may exercise all the rights, powers, and privileges, and may incur all the liabilities, of a natural person of full age and capacity.

- (2) Nothing in subsection (1) authorises or entitles a Bishop to act otherwise than in accordance with the terms of the trusts, if any, affecting any property vested in the Bishop.

#### **6 Property of dioceses and parishes to vest in Bishops**

- (1) Except as provided in subsection (2), all property granted to, or otherwise acquired for the purposes or benefit of, a diocese or of any parish in a diocese, whether before or after the commencement of this Act, vests in the Bishop of the diocese in his capacity as a corporation sole.
- (2) A Bishop in whom property is vested pursuant to subsection (1) may, if the Bishop thinks fit, and subject to such conditions as the Bishop may from time to time impose, transfer that property to any other person, who holds that property subject to those conditions.
- (3) Nothing in subsection (2) authorises a Bishop in whom any property is vested pursuant to subsection (1), or any person to whom property is transferred under subsection (2), to act otherwise than in accordance with the terms of the trusts, if any, affecting that property.

### **Part 3**

#### **Registration of title to land in Bishops**

##### **7 Application for registration**

- (1) This section applies to land that is vested in, held by, or registered in the personal name of,—
- (a) the Bishop of a diocese; or
  - (b) a deceased person,—
- whether alone or jointly or in common with any other person (that Bishop or deceased person being referred to in subsection (2) as the **owner** of the land).
- (2) If the Bishop of a diocese in which land to which this section applies is situated is satisfied—
- (a) that the land does not form part of the beneficial estate of the owner of the land; and
  - (b) that the land is trust property held by the owner on trust for an object or purpose directly or indirectly associated with or relating to the Church or to a diocese or parish in a diocese,—

the Bishop may apply to the Registrar to register the Bishop as proprietor of the land to be held under this Act.

Compare: 1954 No 2 (P) s 16

## **8 Form of application**

Every application under section 7 must be in such form as the Registrar may require, and must be accompanied by the following:

- (a) a statutory declaration by the Bishop that the beneficial ownership of the land to which the application relates has been investigated and the Bishop is personally satisfied of the matters specified in paragraphs (a) and (b) of section 7(2):
- (b) an undertaking under the seal of the Bishop to indemnify the Crown, the Registrar-General of Land, and the Registrar in respect of all claims, suits, or demands that may be brought or made against all or any of them as a result of taking the steps required by the application:
- (c) payment of such fees and expenses as may be fixed by the Registrar-General of Land from time to time as applying to such an application and to the documents and steps in connection with it.

Compare: 1954 No 2 (P) s 17

## **9 Registrar to advertise application**

- (1) On receipt of an application under section 7 accompanied by the documents and fees required by section 8, the Registrar must give notice of the application to any person who appears from the register to have, or who, in the Registrar's opinion has or may have, an estate or interest or any claim to an estate or interest in the land or any part of the land.
- (2) The notice must state that any estate or interest of the person in the land for which a certificate of title may be issued under this Part will lapse unless a caveat is lodged in accordance with this Part.
- (3) The Registrar may also require the application to be advertised in such newspapers, in such form, and on such occasions as the Registrar thinks fit.

Compare: 1954 No 2 (P) s 18

## **10 Caveat against registration**

- (1) A person claiming to have an estate or interest or a claim to an estate or interest in the land to which the application relates or to any part of the land may, within 2 months after the date on which notice is given or the application is advertised, as the case may be, under section 9, lodge with the Registrar a caveat prohibiting the registration of the Bishop as the registered proprietor of the land.
- (2) On receipt of a caveat within the period specified in subsection (1), the Registrar must give notice in writing to the Bishop of the lodging of the caveat.
- (3) A caveat may be withdrawn at any time by the caveator by notice in writing to the Registrar.
- (4) Where a caveat is lodged, the Bishop may—

- (a) withdraw the application by notice in writing to the Registrar; or
  - (b) apply to the High Court for an order for the removal of the caveat.
- (5) On the hearing of an application under subsection (4)(b), the court may make such order as it thinks fit.
- (6) Without limiting subsection (5), the court may order the caveat to be removed as to the whole or any part of the land to which the application relates and, in any such case, the Bishop may amend the application in terms of the order.
- (7) If, within 3 months after the lodging of a caveat or within such further period as the court may allow, the Bishop does not withdraw the application and does not apply to the High Court for an order for the removal of the caveat,—
- (a) the application lapses; and
  - (b) the Registrar must not take further action in respect of the application.

Compare: 1954 No 2 (P) s 19

## **11 Registration**

Where—

- (a) the period within which a caveat may be lodged has expired; and
- (b) no caveat has been lodged within that period or, if it has, the caveat has been withdrawn or has been removed; and
- (c) the Registrar is satisfied that the application either as originally made or as amended has been properly made under this Part,—

the Registrar must register the Bishop as the registered proprietor of the land in accordance with the application and, where necessary, issue a new certificate of title for the land.

Compare: 1954 No 2 (P) s 20

## **Part 4 Variation of Church trusts**

### **12 Application of this Part**

- (1) This Part does not apply to trust property in respect of which, before or after the passing of this Act,—
- (a) 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
  - (b) an application has been made for such approval and has not been 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 so that a trust may be varied under either this Part or under that Act.

**13 Scheme for application or disposal of trust property**

If—

- (a) it is 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 of the trust on which the trust property is held; or
- (c) the object or purpose for which any trust property is held has already been carried out,—

the Bishop who is the trustee of the trust property or, where a Bishop is not the trustee of the trust property but the purposes or the principal purposes for which the trust property is held relate to a diocese or to a parish of a diocese, the Bishop of that diocese, as the case may be, may prepare or cause to be prepared a written scheme for the application or disposal of the trust property for some other object or purpose of a kind specified in section 3.

**14 Preparation of schemes for application or disposal of trust property**

If a scheme prepared under section 13 relates to trust property that is held for a charitable purpose within the meaning of Part 3 of the Charitable Trusts Act 1957,—

- (a) the scheme must provide for the application or disposal of that trust property for a purpose of a kind specified in section 3 that is also a charitable purpose; and
- (b) the Bishop in preparing the scheme, the Diocesan Finance Council, the College of Consultors, the Parish Finance Council, and the Parish Priest, as the case may be, in considering the scheme, and the Bishop in approving the scheme, must 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.

**15 Submission of scheme**

The Bishop must submit every scheme prepared under section 13—

- (a) to the Diocesan Finance Council and the College of Consultors; and
- (b) if the purposes or principal purposes for which the trust property is held relate to a parish of a diocese, to the Parish Priest and Parish Finance Council of that parish.

**16 Statement giving full information**

Every scheme submitted under section 15 must 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).

**17 Notice of scheme**

- (1) On receipt of the scheme, the Diocesan Finance Council must advise the Bishop as to—
  - (a) the persons, bodies, or organisations (if any), in addition to those referred to in section 15, to whom written notice of the scheme must be given; and
  - (b) the manner (if any) in which public notice of the scheme must be given.
- (2) Notice of the scheme must be given by the Bishop in accordance with the advice of the Council.
- (3) If the Bishop is not the trustee of the trust property affected by the scheme, notice of the scheme must also be given by the Bishop to the trustee or trustees of the trust property.
- (4) Every notice under subsection (1)(a) or subsection (3) must—
  - (a) be accompanied by a copy of the scheme and the statement and trust instrument (if any) referred to in section 16; and
  - (b) state that the person, body, organisation, or trustee or trustees to whom the notice is given may, within 60 days after the receipt or publication of the notice, make written objections to, or make written representations concerning, the scheme to the Diocesan Finance Council; and
  - (c) specify an address to which any such written objections or representations may be sent.
- (5) Every notice under subsection (1)(b) must—
  - (a) specify where a copy of the scheme and the statement and trust instrument (if any) referred to in section 16 is available for inspection; and
  - (b) state that any person, body, or organisation may, within 60 days after the receipt or publication of the notice, make written objections to, or make written representations concerning, the scheme to the Diocesan Finance Council; and
  - (c) specify an address to which any such written objections or representations may be sent.

**18 Notice to Attorney-General where trust for charitable purpose**

- (1) 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 Bishop must send to the Attorney-General written notice of the scheme, together with copies of the statement and trust instrument (if any) referred to in section 16.
- (2) The Attorney-General may, within 90 days after receipt of the notice, make written objections to, or make written representations concerning, the scheme to the Diocesan Finance Council.

**19 Diocesan Finance Council to provide copies of objections and representations**

- (1) The Diocesan Finance Council must provide copies of any written objections and written representations received by the Council within the period specified in subsection (4)(b) or subsection (5)(b) of section 17 or section 18(2), as the case may be,—
  - (a) to the College of Consultors; and
  - (b) where the scheme has been submitted to a Parish Priest and a Parish Finance Council under section 15(b), to the Parish Priest and the Parish Finance Council.
- (2) The Diocesan Finance Council must also provide copies of any written objections and written representations received by the Council within the period specified in section 18(2) to the Bishop.

**20 Bishop to have regard to objections and representations by Attorney-General**

- (1) The Bishop must have regard to any written objections and any written representations made by the Attorney-General within the period specified in section 18(2).
- (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 Bishop must not approve the scheme under this Part.

**21 Consent to scheme**

The College of Consultors and the Diocesan Finance Council and, if the scheme has been submitted to a Parish Priest and a Parish Finance Council under section 15(b), the Parish Priest and the Parish Finance Council must consider the scheme and any written objections and written representations received by the Diocesan Finance Council within the period specified in subsection (4)(b) or subsection (5)(b) of section 17 or section 18(2), as the case may be, and may—

- (a) consent to the scheme in its original form; or
- (b) remit the scheme to the Bishop for the consideration of any proposed amendments; or
- (c) consent to the scheme as amended by the Bishop.

**22 Approval of scheme by Bishop**

- (1) Where a scheme, or a scheme as amended, has been consented to in accordance with section 21, the Bishop may approve the scheme.
- (2) Any approval under subsection (1) must be in writing.

- (3) Where a scheme, or a scheme as amended, is approved under this section, the scheme has effect according to its tenor despite the terms of the trust to which the scheme relates.

## **Part 5**

### **Miscellaneous provisions**

#### **23 Delegation by Bishop**

- (1) A Bishop may, from time to time, delegate to an Assistant Bishop, a Vicar General, a Priest, or any person who is a member of the diocese of the Bishop (in this section referred to as a **delegate**) any of the rights, powers, and privileges vested in or belonging to the Bishop, including the power to use the seal of the Bishop, but not including the power of delegation or the powers conferred on a Bishop by Part 4.
- (2) Subject to any general or special directions or conditions given or attached by the Bishop, a delegate may exercise rights, powers, or privileges delegated by the Bishop in the same manner and with the same effect as if they vested in or belonged to the delegate and had not been conferred by delegation.
- (3) A delegate who purports to act pursuant to a delegation is, in the absence of proof to the contrary, presumed to act in accordance with the delegation and a person does not have to enquire whether the delegate is acting under a delegation.
- (4) A delegation under this section—
  - (a) may be revoked at any time:
  - (b) does not prevent the exercise by the Bishop of any right, power, or privilege that has been delegated:
  - (c) until revoked, continues in force despite the fact that the Bishop by whom it was made has ceased to hold office or has become unable to perform the functions and duties of office as if it had been made by the Bishop's successor in office.

#### **24 Vacancy in office or incapacity of Bishop**

If the office of Bishop of a diocese becomes vacant or the Bishop is unable to perform the functions and duties of that office, the Diocesan Administrator has and may exercise all the rights, powers, and privileges of the Bishop.

#### **25 Diocesan boundaries**

- (1) The Bishop of a diocese must, from time to time, deposit in each Land Registry Office in which diocesan land is situated, a certificate signed by the Bishop as to the boundaries of the diocese.
- (2) A document that purports to be a certificate given under subsection (1)—

- (a) is conclusive evidence of the authority of the Bishop to give the certificate; and
- (b) is admissible in evidence in any court of the boundaries of the diocese.

Compare: 1876 No 38 s 6

## **26 Transfer of trust property**

- (1) A trustee may, with the consent of a Bishop, transfer all or any trust property held by the trustee to that Bishop as a trustee in substitution for the existing trustee.
- (2) A trustee may, with the consent of a Bishop, appoint that Bishop as custodian trustee of all or any trust property held by the trustee.
- (3) Nothing in subsection (1) or subsection (2) authorises a trustee or a Bishop to act otherwise than in accordance with the terms of the trusts, if any, affecting the trust property.
- (4) Where trust property is transferred under subsection (1), the trustee who transfers the property ceases to be liable as trustee of the trust property.
- (5) Sections 67, 68, and 69 of the Trusts Act 2019 apply, with such modifications as may be necessary, to the appointment of a Bishop as custodian trustee.
- (6) The appointment of a Bishop as custodian trustee may be revoked by the trustee who made the appointment or by any substitute trustee by notice in writing.
- (7) If the appointment of a Bishop as custodian trustee is revoked, the Bishop must do all things necessary to transfer or vest the trust property in the trustee who made the appointment or in any substitute trustee.
- (8) This section has effect despite any other enactment, or rule of law, or the terms of the instrument creating the trust.

Section 26(5): amended, on 30 January 2021, by section 161 of the Trusts Act 2019 (2019 No 38).

## **27 Repeals**

The enactments specified in the Schedule are repealed.

## **28 Private Act**

This Act is a private Act.

## **Schedule Enactments repealed**

s 27

### **Public Act**

**Roman Catholic Lands Act 1876 (1876 No 38)**

### **Private Acts**

**Roman Catholic Archbishop Empowering Act 1913 (1913 No 2 (P))**

**Roman Catholic Archbishop Empowering Act 1921–22 (1921–22 No 1 (P))**

**Roman Catholic Archbishop Empowering Act 1924 (1924 No 3 (P))**

**Roman Catholic Archbishop Empowering Act 1926 (1926 No 2 (P))**

**Roman Catholic Bishop of Auckland Empowering Act 1906 (1906 No 2 (P))**

**Roman Catholic Bishop of Auckland Empowering Act 1914 (1914 No 3 (P))**

**Roman Catholic Bishop of Auckland Empowering Act 1925 (1925 No 1 (P))**

**Roman Catholic Bishop of Christchurch Empowering Act 1904 (1904 No 4 (P))**

**Roman Catholic Bishop of Dunedin Empowering Act 1935 (1935 No 1 (P))**

**Roman Catholic Bishops Empowering Act 1951 (1951 No 2 (P))**

**Roman Catholic Bishops Empowering Act 1954 (1954 No 2 (P))**

**Roman Catholic Bishops Empowering Amendment Act 1970 (1970 No 2 (P))**

**Roman Catholic Lands Act Extension Act 1890 (1890 No 1 (P))**

### **Local Acts**

**Roman Catholic Archbishop Empowering Act 1909 (1909 No 7 (L))**

**Roman Catholic Archbishop of Wellington Empowering Act 1908 (1908 No 5 (L))**

**Roman Catholic Archbishop of Wellington Empowering Act 1910 (1910 No 4 (L))**

**Roman Catholic Bishop of Auckland Special Powers Act 1909 (1909 No 1 (L))**

## Reprints notes

### **1** *General*

This is a reprint of the Roman Catholic Bishops Empowering Act 1997 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*

Trusts Act 2019 (2019 No 38): section 161

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