

# St Peter's Parish Endowment Fund Trust Bill

Private Bill

## Explanatory note

### General policy statement

The purpose of the St Peter's Parish Endowment Fund Trust Bill (the **Bill**) is to make amendments to the trust deed governing the St Peter's (Wellington) Endowment Fund Trust Board (the **Trust Board**). In particular, the Bill enables the Trust Board to make distributions that are not restricted to the amount of income earned in the year preceding the year of distribution, provides for a limitation on the liability of the members of the Trust Board, and enables the updating of its governance arrangements. The Bill also provides for any future amendments to the trust deed to be made under the Charitable Trusts Act 1957 or the Anglican Church Trusts Act 1981, and repeals the St Peter's Parish Endowment Fund Act 1927.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* is the interpretation clause.

*Clause 4* restates the purposes of the Trust Board in the same manner as in the original trust deed, executed in 1922.

*Clause 5* states that the Trust Board may distribute up to 4% of the trust fund in any financial year, lend to the Parish, and make additional distributions in certain circumstances (up to a limit of 20% in any financial year).

*Clause 6* states that the Trust Board may execute deeds governing its own administrative rules, and that these are to be treated as rules for the purposes of the Charities Act 2005.

*Clause 7* states that the liability of the members of the Trust Board is limited and that the members of the Trust Board are indemnified other than with respect to a breach of trust arising from their dishonesty, gross negligence or wilful misconduct. The exclusions are consistent with sections 40 and 41 of the Trusts Act 2019.

*Clause 8* revokes clauses 4 and 5 of the trust deed.

*Clause 9* addresses the application of the Charitable Trusts Act 1957 and the Anglican Church Trusts Act 1981 and provides that any future amendments to the trust deed that may be required may be made in accordance with those Acts. It also provides that the winding up of the Trust Board may only be done in accordance with the Charitable Trusts Act 1957.

*Clause 10* repeals the St Peter's Parish Endowment Fund Act 1927.

*Hon Grant Robertson*

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### **Contents**

	Page
Preamble	
1 Title	3
2 Commencement	3
3 Interpretation	3
4 Purposes of Trust Board	3
5 Application of income and capital	3
6 Administrative powers	4
7 Liability and indemnification of Trust Board	4
8 Clauses 4 and 5 of trust deed revoked	4
9 Application of other Acts	5
10 Repeal of St Peter's Parish Endowment Fund Act 1927	5

### **Preamble**

- (1) The St Peter's (Wellington) Endowment Fund Trust Board (the **Trust Board**) was established by a declaration of trust dated 8 August 1922 (the **trust deed**):
- (2) Relatively soon after the trust deed was signed, the St Peter's Parish Endowment Fund Act 1927 (the **1927 Act**) was passed, the effect of which was to make amendments to 2 of the clauses in the trust deed. The most up-to-date version of the trust deed is, therefore, one that incorporates amendments made by primary legislation: 5
- (3) The Trust Board is incorporated under the Charitable Trusts Act 1957 (having been incorporated on 16 October 1939 under equivalent legislation in force at that time): 10
- (4) The Trust Board is also subject to the Anglican Church Trusts Act 1981:

- (5) The Trust Board has invested a significant amount of the funds that are held for the charitable purposes of the Trust Board to benefit the parish of St Peter's in Wellington:
- (6) The Trust Board is, however, limited in its ability to distribute income from investing the funds effectively for the intended charitable purposes because the trust deed restricts the size of distributions to the amount of income earned in the preceding year. The Trust Board wishes to amend the trust deed to resolve this: 5
- (7) The trust deed would also benefit from a number of other amendments. In particular, the Trust Board wishes to amend the trust deed to— 10
- (a) specify that loans can be made to the parish; and
  - (b) update and modernise the governance and administration arrangements of the Trust Board; and
  - (c) specify the legal liability of the members of the Trust Board:
- (8) The Trust Board is unable to advance amendments relating to the making of distributions because section 2 of the 1927 Act amends the distribution provisions of the trust deed: 15
- (9) The ability of the Trust Board to make an amendment by way of the Anglican Church Trusts Act 1981 and/or the Charitable Trusts Act 1957 in relation to the legal liability of members of the Trust Board is not clear. The introduction of limitations of liability and of an indemnity provision affect the capital of the funds held by the Trust Board. Accordingly, the Trust Board considers that there is a significant risk that such an amendment cannot be made otherwise than by a private Bill: 20
- (10) The Trust Board considers that legislation is preferable, primarily because all the amendments can be made by way of a single enactment. A two-stage process (consisting of a private Bill followed by High Court proceedings) would involve considerable delay: 25
- (11) The purpose of this Act, therefore, is to— 30
- (a) amend the trust deed in the manner described above; and
  - (b) ensure that any future amendments to the trust deed that may be required will be able to be made under the provisions of the Anglican Church Trusts Act 1981, and, where applicable, the Charitable Trusts Act 1957:
- (12) The changes to the trust deed made by the 1927 Act were limited in scope. As a result of this, along with the passage of time that has elapsed, it is more appropriate to progress a new private Bill (rather than to amend the 1927 Act): 35
- (13) The changes to the trust deed made in this Act make obsolete the changes that were made by the 1927 Act. Accordingly, this Act also repeals the 1927 Act.

**The Parliament of New Zealand therefore enacts as follows:**

**1 Title**

This Act is the St Peter's Parish Endowment Fund Trust Act **2023**.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

**3 Interpretation**

In this Act, unless the context otherwise requires,—

**Diocesan Council** means the Diocesan Council of the Anglican Diocese of Wellington 10

**financial year** means the year ending on 31 December or any other date specified by the Trust Board

**fund** means the endowment fund established by the trust deed

**parish** means the parish of St Peter, Wellington in the Anglican Diocese of Wellington 15

**purposes** means the purposes declared in the trust deed, as restated in **section 4**

**Trust Board** means the St Peter's (Wellington) Endowment Fund Trust Board

**trust deed** means the declaration of trust executed on 8 August 1922 by Herbert Watson, George William Robinson, Lewis Henry Balfour Wilson, George Lawrence, and Sidney Albert Longuet, that established an endowment fund for the parish of St Peter in Wellington, New Zealand 20

**vestry** means the vestry of the parish.

**4 Purposes of Trust Board**

The purposes of the Trust Board are such purposes of the parish that are of a religious, charitable, or educational nature, as the vestry from time to time directs. 25

**5 Application of income and capital**

(1) The Trust Board may, in accordance with its purposes, distribute up to 4% of the fund in each financial year, without regard to the income or capital of the fund. 30

(2) The Trust Board may lend to the parish.

(3) In exceptional circumstances, the vestry may request that the Trust Board make an additional distribution.

(4) The Trust Board must, in considering a request, take into account the following: 35

- (a) the needs of the parish:
- (b) the investment strategy of the trust:
- (c) the desirability of maintaining the capital of the fund:
- (d) any other matters that it considers relevant to the making of an additional distribution. 5
- (5) After considering the request, the Trust Board has an absolute discretion to distribute any amounts additional to the amount distributed under **subsection (1)**, but the total amount distributed in any one financial year (including any amounts distributed under **subsection (1)**) must not exceed 20% of the fund. 10
- (6) For the purposes of **subsections (1) and (5)**, the Trust Board may make a distribution at any time or times, for any period or periods, and subject to any terms and conditions that the Trust Board from time to time determines.
- 6 Administrative powers**
- (1) The Trust Board may, with the approval of the vestry or of the Diocesan Council, execute a deed or amending deed governing its own administrative rules for— 15
- (a) the conduct of its meetings; and
- (b) the responsibilities and powers of the Trust Board; and
- (c) other matters not governed by this Act. 20
- (2) Any rules in a deed or amending deed made under this section must be treated as rules within the meaning of the Charities Act 2005.
- 7 Liability and indemnification of Trust Board**
- (1) No member of the Trust Board (acting in their capacity as a member of the Trust Board) is liable for the consequence of any act or omission, or for any loss, unless the consequence or loss is attributable to a breach of trust arising from that member's dishonesty, wilful misconduct, or gross negligence. 25
- (2) Each member of the Trust Board must be fully indemnified by and out of the fund (whether from capital or income)— 30
- (a) for any loss or liability that they incur in the carrying out or omission of any function, duty, power, or discretion of the Trust Board; and
- (b) in respect of any outlay or expenses incurred by them in the management and administration of the Trust Board.
- (3) However, **subsection (2)** does not apply if the loss or liability is attributable to a breach of trust arising from that member's dishonesty, wilful misconduct, or gross negligence. 35
- 8 Clauses 4 and 5 of trust deed revoked**
- Revoke clauses 4 and 5 of the trust deed.

**9 Application of other Acts**

- (1) Any future amendments to the trust deed may be made in accordance with the Anglican Church Trusts Act 1981 and, where applicable, the Charitable Trusts Act 1957.
- (2) Despite the variation of the trust deed and the mode of administration of the Trust Board by this Act, Part 3 of the Charitable Trusts Act 1957 and Part 3 of the Anglican Church Trusts Act 1981 apply to the Trust Board as if—
  - (a) the purposes for which the property held by the Trust Board is held were charitable purposes within the meaning of the Charitable Trusts Act 1957; and
  - (b) the Trust Board were trustees within the meaning of Part 3 of the Charitable Trusts Act 1957; and
  - (c) those variations had been effected under Part 3 of the Anglican Church Trusts Act 1981.
- (3) The Trust Board may only be wound up in accordance with the Charitable Trusts Act 1957.

**10 Repeal of St Peter's Parish Endowment Fund Act 1927**

The St Peter's Parish Endowment Fund Act 1927 (1927 No 2) is repealed.