

# **Bishop Suter Art Gallery Governance Restructuring Bill**

Local Bill

## **Explanatory note**

The purpose of this Bill is to reform the antique legal structures of the Bishop Suter Art Gallery Trust Board which create substantial problems of administration and accountability, and to adopt modern governance arrangements for the Suter Art Gallery, and place those arrangements on a modern footing.

The Suter Art Gallery acts as the regional art museum for both Nelson and Tasman and depends on local authority funding and support.

The vesting of the assets and liabilities of the Bishop Suter Art Gallery Trust Board in the Bishop Suter Trust, which is a council-controlled organisation of the Nelson City Council and a charitable trust, will give permanent protection to the collection of the Suter Art Gallery, and enable the communities of Nelson and Tasman to have more public accountability in the affairs and funding of the Suter Art Gallery through a charitable trust with modern governance arrangements.

The Bishop Suter Art Gallery Trust Board will be dissolved and the Bishop Suter Art Gallery Trustees Act 1896 will be repealed.

It is desirable that the Bishop Suter Trust and the Nelson City Council be free from certain potential claims arising out of the payment of funds to the Bishop Suter Art Gallery Trust Board by the Suter 2000 Appeal Trust in connection with the public appeal for funds for the redevelopment of the Suter Art Gallery.

These purposes can be attained only by legislation.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. The Bill is to come into force 1 month after the date on which it receives the Royal assent.

### **Part 1**

#### **Preliminary provisions**

*Clause 3* states the purpose of the Bill.

*Clause 4* contains definitions of terms. *Clause 12* contains additional definitions of terms used in *Part 3*.

### **Part 2**

#### **Transfer of property, rights, and obligations from old Board to new Board**

*Clause 5* transfers the property, rights, and obligations of the old Board to the new Board, and provides for the continuity of legal proceedings.

*Clause 6* provides that the transfer of the property, rights, and obligations from the old Board to the new Board does not constitute or trigger certain adverse events, for example a breach of contract or trust.

*Clause 7* provides for the transfer of employment agreements from the old Board to the new Board, and for the continuity of terms and conditions of employment.

*Clause 8* provides for the dissolution of the old Board and its removal from the register of charitable trust boards.

*Clause 9* provides that, after the commencement of the Bill, references in certain documents to the old Board are to have effect as if they were references to the new Board.

*Clause 10* provides for recording the change of name to the new Board by the Registrar-General of Land and any other person charged with keeping any records or registers.

*Clause 11* repeals the Bishop Suter Art Gallery Trustees Act 1896.

**Part 3**  
**Donations for redevelopment of Suter Art  
Gallery**

*Clause 12* contains definitions of terms used in the next clause.

*Clause 13* applies should the new Board decide that the redevelopment of the Suter Art Gallery is to proceed in a different way, or be cancelled or postponed. If the clause applies, it excludes liability on the part of the new Board and the Nelson City Council for any donations applied to the redevelopment by the old Board before the new Board made its decision.

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*Hon Dr Nick Smith*

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### **Contents**

		Page
	Preamble	2
1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Preliminary provisions</b>		
3	Purpose	3
4	Interpretation	3
<b>Part 2</b>		
<b>Transfer of property, rights, and obligations from old Board to new Board</b>		
5	Transfer of property, rights, and obligations	4
6	Matters not affected by the transfer of property, rights, and obligations	4
7	Employees	5
8	Dissolution of old Board	5
9	References in documents	5
10	Records and registers	6
11	Repeal	6
<b>Part 3</b>		
<b>Donations for redevelopment of Suter Art Gallery</b>		
12	Interpretation	6

	<b>Bishop Suter Art Gallery Governance Restructuring Bill</b>	
Preamble		
<hr/>		
13	Exclusion of liability in certain cases	7

**Preamble**

- (1) By a Deed of Conveyance dated 11 May 1895, Amelia Damaris Suter conveyed land to trustees named in the deed to be held on trust for the promotion of art in the City of Nelson as they from time to time should think best and in particular for a site for and otherwise for the establishment and endowment of an art gallery for the people of the City of Nelson to be called the Bishop Suter Art Gallery: 5
- (2) By the Bishop Suter Art Gallery Trustees Act 1896 further land was vested in the trustees on the same trusts: 10
- (3) The trustees became incorporated as a Board under Part 2 of the Charitable Trusts Act 1957 under the name of the Bishop Suter Art Gallery Trust Board:
- (4) The Bishop Suter Art Gallery Trust Board lacks governance powers to conduct its affairs properly and is unable within its rules to correct the position: 15
- (5) The Bishop Suter Art Gallery Trust Board wishes to ensure the future of the Suter Art Gallery and the protection of the art collection by local authority control and funding:
- (6) The Bishop Suter Trust, incorporated as a Board under Part 2 of the Charitable Trusts Act 1957 and being a council-controlled organisation of the Nelson City Council, should be recognised to carry on the functions of the Bishop Suter Art Gallery Trust Board with extended objects and powers: 20
- (7) The Bishop Suter Art Gallery Trust Board should be dissolved: 25
- (8) The property, rights, and obligations of the Bishop Suter Art Gallery Trust Board should be vested in The Bishop Suter Trust:
- (9) The Bishop Suter Art Gallery Trustees Act 1896 should be repealed: 30
- (10) The change to a council-controlled organisation raises doubts about the liability of The Bishop Suter Trust and the Nelson City Council in respect of benefits received by the Bishop

Suter Art Gallery Trust Board from the Suter 2000 Appeal Trust pursuant to the Funding Agreement:

- (11) The objects of this Act cannot be attained otherwise than by legislation:

**The Parliament of New Zealand therefore enacts as follows:** 5

**1 Title**

This Act is the Bishop Suter Art Gallery Governance Restructuring Act **2008**.

**2 Commencement**

This Act comes into force 1 month after the date on which it receives the Royal assent. 10

**Part 1  
Preliminary provisions**

**3 Purpose**

The purpose of this Act is to— 15

- (a) transfer all the property, rights, and obligations of the Bishop Suter Art Gallery Trust Board to The Bishop Suter Trust; and
- (b) dissolve the Bishop Suter Art Gallery Trust Board and remove it from the register of charitable trust boards under the Charitable Trusts Act 1957; and 20
- (c) provide that certain persons have no legal liability for donations given to the Bishop Suter Art Gallery Trust Board for the redevelopment of the Suter Art Gallery should the redevelopment differ from the basis on which the donations were given, or not proceed, or be postponed; and 25
- (d) repeal the Bishop Suter Art Gallery Trustees Act 1896.

**4 Interpretation**

In this Act, unless the context otherwise requires,— 30

**new Board** means The Bishop Suter Trust incorporated as a Board under Part 2 of the Charitable Trusts Act 1957

**old Board** means the Bishop Suter Art Gallery Trust Board incorporated under Part 2 of the Charitable Trusts Act 1957

**property—**

- (a) means every type of property; and
- (b) includes— 5
  - (i) every type of estate and interest in property; and
  - (ii) money.

## Part 2

### Transfer of property, rights, and obligations from old Board to new Board 10

#### 5 Transfer of property, rights, and obligations

- (1) On and from the commencement of this Act, the property, rights, and obligations of the old Board become the property, rights, and obligations of the new Board.
- (2) Proceedings that could have been commenced or continued by or against the old Board before the commencement of this Act may be commenced or continued by or against the new Board on and from the commencement of this Act. 15

#### 6 Matters not affected by the transfer of property, rights, and obligations 20

- (1) The dissolution of the old Board and the transfer of its property, rights, and obligations to the new Board—
  - (a) is not to be treated as placing a person in breach of, or default under, any contract, or in breach of trust, or in breach of confidence, or as otherwise making the person guilty of a civil wrong; and 25
  - (b) is not to be treated as entitling a person to—
    - (i) terminate or cancel or modify a contract, agreement, or arrangement; or
    - (ii) enforce or accelerate the performance of an obligation; or 30
    - (iii) require the performance of an obligation not otherwise arising for performance; and
  - (c) does not release any surety wholly or in part from all or any obligation; and 35
  - (d) does not invalidate or discharge any contract or security.



- (2) To avoid doubt, the dissolution of the old Board and the transfer of its property, rights, and obligations to the new Board does not alter the terms and conditions of any trust, agreement, or arrangement under which items are held in the collection of the Suter Art Gallery. 5

**7 Employees**

- (1) This section applies to a person who is an employee of the old Board immediately before the commencement of this Act.
- (2) On and from the commencement of this Act, the person becomes an employee of the new Board. 10
- (3) For the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of the person—
- (a) his or her employment agreement is unbroken; and
- (b) the period of his or her service with the old Board is to be treated as a period of service with the new Board. 15
- (4) The terms and conditions of employment of the person with the new Board are—
- (a) identical to the terms and conditions of his or her employment with the old Board immediately before the commencement of this Act; and
- (b) capable of variation in the same manner. 20
- (5) The person is not entitled to receive any payment or other benefit because he or she has, under this Act, ceased to be an employee of the old Board and become an employee of the new Board. 25

**8 Dissolution of old Board**

- (1) On the commencement of this Act, the old Board is dissolved.
- (2) The Registrar of Incorporated Societies must, as soon as practicable after the commencement of this Act, remove the name of the old Board from the register kept under Part 2 of the Charitable Trusts Act 1957. 30

**9 References in documents**

On and from the commencement of this Act, references to the old Board in any contract, lease, notice, order, proceedings, or 35

other document have effect as if they were references to the new Board.

## **10 Records and registers**

- (1) Neither the Registrar-General of Land nor any other person charged with the keeping of any records or registers is obliged solely by reason of any provision of this Part to change any name in those records or registers or in any document. 5
- (2) In the absence of evidence to the contrary, it is sufficient proof that any property, rights, or obligations of the old Board become, under this Part, the property, rights, and obligations of the new Board if a person presents to the Registrar-General of Land or the other person, as the case may require, an instrument, whether or not comprising an instrument of transfer,— 10
- (a) executed or purporting to be executed by or on behalf of the new Board; and 15
- (b) relating to any property, rights, or obligations of the old Board in existence immediately before the commencement of this Act; and
- (c) containing a recital that the property, rights, or obligations have become the property, rights, or obligations of the new Board under this Act. 20

## **11 Repeal**

The Bishop Suter Art Gallery Trustees Act 1896 is repealed.

## **Part 3**

### **Donations for redevelopment of Suter Art Gallery** 25

## **12 Interpretation**

In this Part,—

- Funding Agreement** means the Agreement dated 20 July 2001— 30
- (a) made between the old Board and The Suter 2000 Appeal Trust; and
- (b) providing for the old Board to implement the proposals contained in the Project Charter conditional on the financial cost being met by The Suter 2000 Appeal Trust 35

**Project Charter** means the Project Charter for the Suter 2000 Project—

- (a) published by the old Board in 2000; and
- (b) providing for the redevelopment of the Suter Art Gallery

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**Suter Art Gallery** means the Bishop Suter Art Gallery at 208 Bridge Street, Nelson, owned and administered, immediately before the commencement of this Act, by the old Board

**The Suter 2000 Appeal Trust** means The Suter 2000 Appeal Trust—

10

- (a) incorporated as a Board under Part 2 of the Charitable Trusts Act 1957; and
- (b) having as its primary purpose the meeting of the capital cost of the redevelopment of the Suter Art Gallery as set out in the Project Charter.

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### 13 Exclusion of liability in certain cases

(1) **Subsection (2)** applies if the new Board decides—

- (a) to proceed with the redevelopment of the Suter Art Gallery in a way that is different from that provided in the Project Charter; or
- (b) to postpone the redevelopment of the Suter Art Gallery; or
- (c) to cancel the redevelopment of the Suter Art Gallery.

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(2) Neither the new Board nor the Nelson City Council is liable for, and proceedings may not be brought or continued against either of them in relation to, any donation, grant, or gift—

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- (a) paid or given by The Suter 2000 Appeal Trust to the old Board under the Funding Agreement; and
- (b) applied by the old Board as provided in the Project Charter before the new Board makes a decision referred to in **subsection (1)**.

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