



# Methodist Church of New Zealand Trusts Act 2009

Private Act 2009 No 3  
Date of assent 17 December 2009  
Commencement see section 2

## 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>Variation of Church trusts</b>		
5	Meaning of trust property	4
6	Part additional to provisions of Charitable Trusts Act 1957	5
7	Scheme for application or disposal of trust property	5
8	Preparation of scheme for application or disposal of charitable trust property	5
9	Submission of scheme to committee or legal adviser	6
10	Statement giving full information	6
11	Notice of scheme	6
12	Notice to Attorney-General of scheme prepared under this Part	7
13	Committee or legal adviser must provide copies of objections and representations	8

14	Committee or legal adviser must have regard to objections and representations by Attorney-General	8
15	Consideration by committee or legal adviser of scheme and any objections or representations	8
16	Conference may approve scheme	9

**Part 3**

**Trusts for orphanages and children’s homes**

17	Application	9
18	Orphanage or children’s trusts	9
19	Power to transfer trust funds and trust properties	10
20	Appointment and removal of trustees	10
21	Power to act together with other persons	11

**Part 4**

**Miscellaneous provisions**

22	Protection of purchasers and others	11
23	Costs and charges	11

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**Preamble**

- (1) The Methodist Church of New Zealand holds real and personal property on trust for—
  - (a) objects or purposes directly or indirectly associated with or relating to the Methodist Church; or
  - (b) furthering social services, hospital or residential care, or educational needs directly or indirectly associated with the Methodist Church:
  
- (2) The Methodist Church of New Zealand also holds trust funds for—
  - (a) the purposes of Methodist orphanages or Methodist children’s homes in New Zealand; and
  - (b) the care, welfare, or benefit of persons being cared for, or formerly cared for, in those orphanages or children’s homes:
  
- (3) The Methodist Church of New Zealand wishes—
  - (a) to have an alternative process to that under the Charitable Trusts Act 1957 to vary the trusts referred to in recital (1); and

- (b) to have the objects or purposes of the trusts referred to in recital (2) widened to take account of changes in policy and law relating to the care of children and young persons:
- (4) The objects of this Act cannot be achieved without legislation:

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

**1 Title**

This Act is the Methodist Church of New Zealand Trusts Act 2009.

**2 Commencement**

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

**Part 1**  
**Preliminary provisions**

**3 Purpose**

The purpose of this Act is to—

- (a) provide an alternative process to that under the Charitable Trusts Act 1957 to vary certain trusts relating to the Methodist Church; and
- (b) widen the objects or purposes of trust funds and trust properties relating to Methodist orphanages or Methodist children's homes.

**4 Interpretation**

In this Act, unless the context otherwise requires,—

**Board** means the Methodist General Purposes Trust Board incorporated under the Charitable Trusts Act 1957

**Church** or **Methodist Church** means the Methodist Church of New Zealand recognised as an independent Conference under the Methodist Church of New Zealand Act 1911

**Conference** means the Annual Conference of the Methodist Church

**General Secretary** means the executive officer of the Board of Administration of the Methodist Church

**laws and regulations** means the laws and regulations of the Methodist Church

**legal adviser** means a barrister and solicitor of the High Court of New Zealand in active practice

**President**—

- (a) means the President of the Methodist Church; and
- (b) includes any person or persons authorised by the Conference to perform and carry out the duties of the President

**President's legal adviser** means the legal adviser to the President appointed by the Conference each year under the laws and regulations

**property**—

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

**Tumuaki** means the person appointed to the Hui Poari to lead the tangata whenua, Te Taha Māori within the Methodist Church.

## Part 2 Variation of Church trusts

### 5 Meaning of trust property

In this Part, unless the context otherwise requires, **trust property** means any property held on trust on behalf of the Church or any part of the Church for either or both of the following types of objects or purposes (whether or not the property is invested pending its application for an object or purpose):

- (a) an object or purpose directly or indirectly associated with or relating to the Church or the whole or any part of any synod, parish, rohe, connexional division, mission, board, committee, congregation, association, or group of the Church; or
- (b) an object or purpose of promoting and furthering social services, hospital or residential care, care for the

elderly, or educational needs directly or indirectly associated with or relating to the Church.

**6 Part additional to provisions of Charitable Trusts Act 1957**

- (1) The provisions of this Part are in addition to the provisions of the Charitable Trusts Act 1957 so that a trust that may be varied under that Act can be varied under this Part.
- (2) However, this Part does not apply to trust property in respect of which, before or after this Act comes into force,—
  - (a) a scheme has been approved by the High Court or the Attorney-General under Part 3 or 4 of the Charitable Trusts Act 1957; or
  - (b) an application has been made for such approval and has not been withdrawn.

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

- (1) This section applies if—
  - (a) it is impossible, 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.
- (2) The trustee of the trust property may prepare, or cause to be prepared, a written scheme for the application or disposal of the trust property for some other charitable object or charitable purpose or combination of charitable objects or charitable purposes of a kind specified in the definition of a trust property in section 5.

**8 Preparation of scheme for application or disposal of charitable trust property**

If a scheme prepared under section 7 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 the trust property for an object or purpose of a kind specified in the definition of trust property in section 5; and
- (b) the trustee of the trust property in preparing the scheme, the committee or legal adviser (authorised or appointed under section 9) in considering and reporting on the scheme, and the Conference in deciding whether to approve the scheme, must act in accordance with the rules of law that would be applied by the High Court on application made to it under Part 3 of the Charitable Trusts Act 1957 if the scheme were submitted to the High Court under that Part of that Act.

#### **9 Submission of scheme to committee or legal adviser**

- (1) A trustee must submit a scheme prepared under section 7 to—
  - (a) a committee authorised by the Conference to consider schemes under this Part; or
  - (b) a legal adviser appointed by the Conference.
- (2) The committee referred to in subsection (1)(a) must comprise—
  - (a) the President; and
  - (b) the immediate past President; and
  - (c) the General Secretary; and
  - (d) the President's legal adviser; and
  - (e) the Tumuaki.

#### **10 Statement giving full information**

- A scheme submitted under section 9 must be accompanied by—
- (a) a statement giving full information about the reasons for the proposed application or proposed disposal of the trust property; and
  - (b) a copy of the trust instrument (if any).

#### **11 Notice of scheme**

- (1) As soon as practicable after receiving the scheme, the committee or legal adviser to whom it is submitted must advise the trustee as to—

- (a) the persons, bodies, or organisations (if any) 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 trustee in accordance with the advice of the committee or legal adviser.
- (3) A notice under subsection (1)(a) must—
- (a) be accompanied by a copy of the scheme and the statement and trust instrument (if any) referred to in section 10; and
  - (b) state that the person, body, or organisation 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 committee or legal adviser; and
  - (c) specify an address to which any written objections or representations may be sent.
- (4) A 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 10 are 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 committee or legal adviser; and
  - (c) specify an address to which any written objections or representations may be sent.

## **12 Notice to Attorney-General of scheme prepared under this Part**

- (1) If a scheme is prepared under this Part, the committee or legal adviser must send to the Attorney-General—
- (a) written notice of the scheme; and
  - (b) copies of the statement and trust instrument (if any) referred to in section 10.
- (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 committee or legal adviser.

**13 Committee or legal adviser must provide copies of objections and representations**

The committee or legal adviser must provide to the trustee copies of any written objections and any written representations received by the committee or legal adviser within the period specified in section 11(3)(b) or (4)(b) or section 12(2).

**14 Committee or legal adviser must have regard to objections and representations by Attorney-General**

- (1) The committee or legal adviser must have regard to any written objections and any written representations made by the Attorney-General within the period specified in section 12(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 High Court under Part 3 of the Charitable Trusts Act 1957, the Conference must not approve the scheme.

**15 Consideration by committee or legal adviser of scheme and any objections or representations**

- (1) The committee or legal adviser—
  - (a) must consider the scheme and any written objections and any written representations received by the committee or legal adviser within the period specified in section 11(3)(b) or (4)(b) or section 12(2); and
  - (b) may remit the scheme to the trustee of the trust property for consideration of and agreement to any changes recommended by the committee or legal adviser.
- (2) The committee or legal adviser must—
  - (a) prepare a report on the scheme with any amendments that the trustee of the trust property agrees to; and
  - (b) submit to the Conference—
    - (i) the report prepared under paragraph (a); and
    - (ii) the scheme; and
    - (iii) any objections or representations made in relation to the scheme.



**16 Conference may approve scheme**

- (1) After considering the report, scheme, and any submissions or representations submitted to it under section 15(2)(b), the Conference may approve the scheme.
- (2) A scheme approved by the Conference has effect according to its tenor despite the terms of the instrument that created the trust.
- (3) This section applies subject to section 14(2).

### **Part 3**

#### **Trusts for orphanages and children's homes**

**17 Application**

- (1) This Part applies in relation to all charitable trust funds and trust properties that, on or after the commencement of this Act, are vested in trustees—
  - (a) for the purposes of Methodist orphanages or Methodist children's homes in New Zealand; or
  - (b) for the care, welfare, or benefit of persons being cared for, or formerly cared for, in Methodist orphanages or Methodist children's homes in New Zealand.
- (2) However, this Part does not apply in relation to a trust fund or property that has no general charitable intention.

**18 Orphanage or children's trusts**

- (1) Every trust fund and trust property to which this Part applies is to be held for charitable purposes relating to the welfare of children in New Zealand.
- (2) However, if any trust fund or trust property to which this Part applies is held for the purposes of, or in connection with, a specific Methodist orphanage or Methodist children's home, subsection (1) applies in relation to the trust fund or trust property only if it is impossible, impracticable, or inexpedient to give effect to those purposes.
- (3) This section applies despite the terms on which a trust fund or trust property is held.

**19 Power to transfer trust funds and trust properties**

- (1) A trustee of trust funds or trust properties to which this Part applies may pay or transfer the whole or any part of the funds or properties to the Board to be held by the Board as trustee.
- (2) The Board may apply the funds or property as if the funds or property were funds or property held under section 18.
- (3) Subsection (2) applies even though the powers of application conferred by this Act in relation to the funds or property are wider than the powers conferred by any instrument creating the trust.
- (4) The Board may invest and amalgamate funds transferred to it under subsection (1) with other trust funds held by the Board and to which this Part applies.
- (5) On and from the payment or transfer of funds or properties to the Board under this section,—
  - (a) the trustee making the transfer or payment is not liable for the proper application of the capital or income of the funds or properties; but
  - (b) the Board is liable for the proper application and administration of the capital and income of the funds or properties—
    - (i) in accordance with the instruments creating the trusts; but
    - (ii) subject to the modifications made to the trusts by this Act.

**20 Appointment and removal of trustees**

- (1) The Conference (or any board, society, or person authorised by it under the laws and regulations) may appoint and remove trustees of any trust funds or trust properties to which this Part applies.
- (2) The Conference may not exercise the power under subsection (1) unless the trustees concerned have first been consulted about the proposed appointment or removal of trustees.
- (3) This section applies only if the Conference would not otherwise have the power to appoint and remove the trustees.

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

The Board may, for the purposes of section 18 or 19, join or act in association with any other persons or bodies of persons in doing any act or thing which, in the opinion of the Board, will be for the welfare of children in New Zealand.

**Part 4****Miscellaneous provisions****22 Protection of purchasers and others**

A purchaser, vendor, mortgagee, lessee, or other person to or with whom any sale, exchange, mortgage, or lease is made under this Act is not under a duty to inquire—

- (a) whether any trustee or authorised trust board has authority or power to enter into the transaction; or
- (b) whether the transaction is consistent with the trusts on which the property is held; or
- (c) whether any authority required by this Act to be given has been duly given; or
- (d) otherwise as to the propriety or regularity of the transaction; or
- (e) as to the application of any money received by the trustee or authorised trust board on the transaction.

**23 Costs and charges**

The costs, charges, disbursements, and expenses of preparing, promoting, and passing this Act may be paid by the Board out of income from the trust funds or trust properties transferred to it under Part 3.

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**Legislative history**

28 April 2009	Introduction (Bill 29–1)
6 May 2009	First reading and referral to Finance and Expenditure Committee
2 November 2009	Reported from Finance and Expenditure Committee (Bill 29–2)
18 November 2009	Second reading
9 December 2009	Third reading
17 December 2009	Royal assent

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