

**Reprint
as at 28 August 1957**



Mina Tait Horton Estate Act 1942

Private Act 1942 No 1
Date of assent 26 October 1942
Commencement 26 October 1942

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An Act to vary the terms of certain trusts created by the will of the late Mina Tait Horton, of Auckland, spinster, by extending the period within which certain conditions attached to a bequest for the Building Fund for the Cathedral of the Auckland Diocese of the Church of the Province of New Zealand (commonly called the Church of England) may be performed

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

Preamble

Whereas Mina Tait Horton, late of Auckland, spinster, died on 3 May 1935 having made her last will and testament dated 23 December 1932, which said will was duly proved in the Supreme Court of New Zealand at Auckland on 17 May 1935: And whereas by her said will the said Mina Tait Horton, after providing for certain legacies and bequests, devised and bequeathed to Henry Horton and the New Zealand Insurance Company, Limited, as trustees, the residue of her estate upon, inter alia, the following trusts:

- (a) to divide the said residue into 4 equal shares and to set aside one of such shares and to pay the income arising therefrom to one Robert Chisholm Horton during his lifetime:
- (b) as to the remaining 3 of such equal shares, to stand possessed thereof and of any accumulated income therefrom upon trust for the building fund for the cathedral of the Auckland Diocese of the Church of the Province of New Zealand (commonly called the Church of England) to be paid to the General Trust Board of the said diocese or other the appropriate body controlling such building fund:

And whereas the said will further provides, inter alia, that the design for such building should be competitive, and that if such design should not be accepted by the General Trust Board within 7 years from the date of the death of the said Mina Tait Horton, and if such building should not be commenced within 10 years of her death, or if the said trustees should not be satisfied at the end of the said 10 years that such building will be properly carried on to a completed state, then that the said devise and bequest for the said building fund should lapse and that the said 3 shares and accumulated income should then be held by the trustees upon the trusts following:

- (i) a sum not exceeding 1,000 pounds to be applied to the purchase of an oil painting to be presented to the City of Auckland:
- (ii) to the Trust Board of Saint Mary's Homes, the Diocesan Pension Board for the Number Three Fund (Clergy, Widows, and Orphans Fund), the Trust Board of

the Orphan Home at Papatoetoe, and the Vestry of St Aidan's Church, Remuera, the sum of 1,000 pounds each:

- (iii) all the rest, residue, and remainder of the said 3 shares and accumulations therein for the Auckland University College Council, the Trust Board of the Diocesan High School for Girls at Auckland, and to the board of governors for the time being of King's College at Auckland in equal shares, the sums so received by such bodies under this bequest to be in each case employed to establish a scholarship or scholarships to be called the Mina Tait Horton Scholarships:

And whereas the testatrix by her said will provided that the one-fourth share which she had directed should be set aside and the income therefrom paid to the said Robert Chisholm Horton during his lifetime should, from and after his death, follow the destination of the other 3 shares of her residuary estate in accordance with the provisions set forth in the will regarding such 3 shares:

And whereas the said Robert Chisholm Horton did on 2 March 1942 assign and surrender such life interest to the said trustees: And whereas the said General Trust Board of the Diocese of Auckland has within 7 years of the death of the said Mina Tait Horton accepted a competitive design for such cathedral:

And whereas, in order that the said devise and bequest directed by the testatrix to be paid to the said General Trust Board of the Diocese of Auckland shall not lapse in accordance with the conditions of the will, the said cathedral building must be commenced within 10 years from 3 May 1935, being the date of the death of the testatrix, and the trustees of the will must be satisfied within such 10 years that the said building will be properly carried on to a completed state:

And whereas the cost of completing the cathedral according to the design placed first was on the basis of charges for labour and material in New Zealand in December 1938 estimated at 250,000 pounds, and the cost of building a first portion of the design such as could be used for the time being as a cathedral was estimated at 90,000 pounds:

And whereas the estimated value of the said bequest for such Cathedral Building Fund, inclusive of the one-fourth share which was subject to a life interest as aforesaid, was as at the date of death of the testatrix less than 68,000 pounds:

And whereas the conditions resulting from the existence of a state of war since 3 September 1939 have greatly increased the cost of building and have made it impracticable for the said General Trust Board to proceed either with the collection of subscriptions towards the Cathedral Building Fund or with the building of the said cathedral:

And whereas similar conditions are likely to exist during the continuance of a state of war and for a considerable time after such state of war has ceased to exist:

And whereas it is desired by the said General Trust Board to obtain a variation of the trusts created by the said will to provide that the bequest for such Cathedral Building Fund shall lapse if, but only if, the said cathedral building is not commenced within 7 years from 28 April 1952 or if the trustees are not satisfied at the end of that period that the building will be properly carried on to a completed state and such variation is not attainable otherwise than by legislation.

Preamble: amended, on 28 August 1957, by section 2 of the Mina Tait Horton Estate Amendment Act 1957 (1957 No 4 (P)).

1 Short Title

This Act may be cited as the Mina Tait Horton Estate Act 1942.

2 Interpretation

In this Act, if not inconsistent with the context,—

bequest means and includes so much of the estate of the testatrix, together with accumulated income therefrom as she gave, devised, and bequeathed to her trustees upon trust for the building fund for the cathedral of the Auckland Diocese of the Church of the Province of New Zealand (commonly called the Church of England), including therein the devise of a reversionary interest in that one-fourth share of the residue of the estate which was subject to a life interest in favour of one Robert Chisholm Horton

testatrix means the said Mina Tait Horton, deceased

trustees means Sir Henry Horton, of Auckland, newspaper director, and the New Zealand Insurance Company, Limited, and the trustee or trustees for the time being lawfully acting as trustee or trustees in lieu of the said Sir Henry Horton and the New Zealand Insurance Company, Limited, or either of them
will means the said will of Mina Tait Horton.

3 Extension of time for performance of conditions of bequest

- (1) Notwithstanding anything to the contrary in the will, the bequest shall lapse if, but only if, the first portion is not commenced within 7 years from 28 April 1952 or if the trustees are not satisfied at the end of that period that the first portion will be properly carried on to a completed state. The words “first portion” shall in this section mean and include the first portion of the cathedral building as set out in the accepted design, with such modifications or alterations in the design, including therein the materials to be used, as from time to time may either—
 - (a) be proposed by the Board and approved by the trustees; or, alternatively
 - (b) be approved by the Supreme Court of New Zealand upon an application made by the Board by originating summons.
- (2) In the event of the lapse of the bequest in accordance with this section all reversionary rights suspended by the operation of this section shall thereupon be deemed to be revived.
- (3) It is hereby declared that the trustees need not wait until the end of the period of 7 years described in subsection (1) before they express their satisfaction that the first portion will be properly carried on to a completed state, but they may do so at any time before the expiration of the said period of 7 years.

Section 3(1): amended, on 28 August 1957, by section 2 of the Mina Tait Horton Estate Amendment Act 1957 (1957 No 4 (P)).

Section 3(1): amended, on 29 September 1955, by section 2(a) of the Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P)).

Section 3(1): amended, on 29 September 1955, by section 2(b) of the Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P)).

Section 3(1): amended, on 29 September 1955, by section 2(c) of the Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P)).

Section 3(1)(a): inserted, on 29 September 1955, by section 2(c) of the Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P)).

Section 3(1)(b): inserted, on 29 September 1955, by section 2(c) of the Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P)).

Section 3(3): inserted, on 29 September 1955, by section 2(d) of the Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P)).

4 Private Act

This Act is hereby declared to be a private Act.

Mina Tait Horton Estate Amendment Act 1955

Private Act 1955 No 2
Date of assent 29 September 1955
Commencement 29 September 1955

Preamble

Whereas by the Mina Tait Horton Estate Act 1942 (hereinafter referred to as “the principal Act”) the period within which certain conditions attached to the bequest as it is defined in the principal Act may be performed was extended:

And whereas in the competitive design for the cathedral, accepted by the General Trust Board (hereinafter referred to as the **Board**) on 23 October 1941, there was included a design for a building, being the first portion of the accepted design to be built and capable of being used as a cathedral:

And whereas the estimated costs in December 1938 for the cathedral according to the accepted design and for the said first portion were respectively 250,000 pounds and 90,000 pounds:

And whereas since the passing of the principal Act the cost of building has greatly increased:

And whereas the cost of completing the first portion only of the cathedral according to the accepted design with certain modifications or alterations is on the basis of charges for labour and material in New Zealand in June 1955 estimated at 300,000 pounds:

And whereas the amount of the said building fund, including therein the bequest, was in June 1955 approximately 174,000 pounds:

And whereas by a judgment of the Supreme Court of New Zealand delivered by the Honourable Mr Justice Smith on 26 November 1936 it was declared that the terms of the bequest did not require the cathedral to be of any particular size, design, or type, but “left those matters to the discretion of the Church authorities”:

And whereas by reason of the acceptance by the Board of the competitive design hereinbefore referred to it would be necessary, in order to comply with the conditions of section 3 of the principal Act, that the cathedral building as set forth in the accepted design should be commenced within the period of time prescribed by such

section and that the trustees should be satisfied at the end of that period that the said cathedral building will be properly carried on to a completed state:

And whereas it is desirable, in order to give effect to the main purpose and intention expressed in the will of the testatrix, that the principal Act should be so amended that it shall be deemed a compliance with the principal Act and with the terms of the will if the first portion of the cathedral building is commenced within the period of time stated in section 3 of the principal Act and if the trustees are satisfied at the end of such period that the first portion will be properly carried on to a completed state:

And whereas it may be expedient that the design of the first portion should be altered or modified:

And whereas by the judgment of the Supreme Court hereinbefore referred to it was further declared that the trustees were not required by the will to wait until the end of the period of 10 years after the death of the testatrix before they expressed their satisfaction that the cathedral would be properly carried on to a completed state, but that they might do so at any time before the expiration of the said period of 10 years:

And whereas it is desirable to remove any doubts as to whether or not a similar construction shall apply to section 3 of the principal Act as hereinafter amended by this Act.

1 Short Title

This Act may be cited as the Mina Tait Horton Estate Amendment Act 1955, and shall be read together with and deemed part of the Mina Tait Horton Estate Act 1942 (hereinafter referred to as “the principal Act”).

3 Provisions relating to modification of design

- (1) In respect of any application which may be made to the Supreme Court under section 3 of the principal Act, as amended by section 2 of this Act, it is hereby declared that the court may take into consideration all circumstances which may relate to the desirability or otherwise of any modification or alteration of the design of the first portion, including but without limiting the generality of such circumstances

variations from time to time in the cost of labour and materials shortage of all or any material statutory provisions and regulations and bylaws affecting or controlling buildings or building and the effect of any modification or alteration upon the usefulness or appearance of the first portion.

- (2) Any such application as aforesaid may be made to the court by the Board, notwithstanding that the trustees for any reason have not approved or have refused to approve of the proposed modifications or alterations.
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Notes**1 General**

This is a reprint of the Mina Tait Horton Estate Act 1942. The reprint incorporates all the amendments to the Act as at 28 August 1957, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Mina Tait Horton Estate Amendment Act 1957 (1957 No 4 (P))

Mina Tait Horton Estate Amendment Act 1955 (1955 No 2 (P))
