

**Reprint
as at 1 January 2004**



R O Bradley Estate Act 1972

Private Act 1972 No 3
Date of assent 13 October 1972
Commencement 13 October 1972

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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.

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An Act to incorporate the Board of Control of the Orton Bradley Park

Preamble

Whereas Reginald Orton Bradley late of Charteris Bay, farmer, died on 24 January 1943 having first made his last will together with 1 codicil thereto dated, respectively, 18 March 1939 and 20 September 1941, and the said will and codicil were duly proved in the Supreme Court of New Zealand at Christchurch on 11 February 1943 by Lionel Denis Cotterill the executor in the said will and codicil named:

And whereas, after compliance with certain provisions of the said will which have been complied with and without prejudice to an annuity which has ceased to be payable and after the death of the last survivor of 2 sisters and 2 nephews all of whom have died with the exception of 1 nephew who now has a life interest in the estate of the said testator, the said will provides that so much of the residuary estate of the testator remaining at the death of the last survivor of such sisters and nephews should be held upon trust for the purposes of a National Park for the just benefit and enjoyment of the people of New Zealand to be known as and called the Bradley National Park of Canterbury subject to the provisions thereafter appearing, it being the desire and intention of the testator that the whole of his farm at Charteris Bay comprising 1 612 acres 2 roods 29 perches, being the land comprised and described in certificates of title Volume 9B folio 871 and Volume 446 folio 112, Canterbury Land Registry, should be used as and form a park and that the remainder of his residuary

estate should be utilised for improving and maintaining such park as thereafter provided, the said park to be managed by or under the control of a Board of Control consisting of the following persons:

- (a) the chairman for the time being of the Mount Herbert County Council who should be the permanent chairman of the Board:
- (b) the President for the time being of the Canterbury Horticultural Society:
- (c) the President for the time being of the Automobile Association of Canterbury:
- (d) the Mayor for the time being of the Borough of Lyttelton:
- (e) the Mayor for the time being of the Borough of Sumner:
- (f) the Mayor for the time being of the Borough of New Brighton:
- (g) the chairman for the time being of the Akaroa County Council:
- (h) the curator for the time being of the Botanical Gardens of the City of Christchurch:

And whereas the said Board is to follow the procedure indicated in the said will which contains an expression of desire that the Board should continue the planting of shrubs and trees or ornamental trees and shrubs for so many years and in such manner as the Board should consider desirable for the improvement of the Park:

And whereas the said will provides that it is the desire of the testator without imposing any legal obligation on the part of the Board or the trustees so to do that the Board and the trustees should after the death of the said sisters and nephews apply for leave to introduce a Bill to take all necessary steps to obtain the passing of an Act having for its objects the constitution of the Board as a corporate body, and the vesting of the Park, funds, and chattels in the Board, and the will provides that the trustees shall not sell the said farm property or any part thereof and the will empowers the trustees to carry on any farming business for such time as the trustees think fit:

And whereas having regard to the expressed wish of the testator to incorporate a Board of Control as a body corporate

with perpetual succession and a common seal but after consideration of the fact that the offices of Mayor of the Borough of Sumner, Mayor of the Borough of New Brighton, and the curator of the Botanical Gardens of the City of Christchurch have ceased to exist and for better carrying into effect the intentions of the testator it has been deemed advisable that alterations should be made in the constitution of the Board:

And whereas the name used in the said will has been found not to be permissible and the name the Orton Bradley Park has been substituted therefor:

And whereas since the death of the said testator the said farm property has been enlarged by the purchase of an area of 21.7 perches comprised and described in certificate of title Volume 455 folio 209, Canterbury Land Registry, and 2 acres 32.5 perches comprised and described in certificate of title Volume 514 folio 247, Canterbury Land Registry:

And whereas, although it may be possible for the objects of the Bill to be attained otherwise than by legislation, there is some doubt as to whether the Supreme Court would exercise its powers under the Charitable Trusts Act 1957 to implement all the provisions of this Bill and, even if it did, whether it would be prepared to exercise those powers before the death of the last surviving life tenant:

And whereas it is desirable that the appointment of members of the Board be made without delay after the death of the last surviving life tenant:

And whereas the last surviving life tenant has consented to the provisions of the Bill.

1 Short Title

This Act may be cited as the R O Bradley Estate Act 1972.

2 Interpretation

In this Act, unless the context otherwise requires,—

Board means the Orton Bradley Park Board constituted under this Act

Park means the Orton Bradley Park held by the Board under section 19, together with any additional land that may be ac-

quired by the Board for the purposes of the Park, but excluding any such lands as may have been disposed of by the Board
trustees means the trustees for the time being of the will
will means the will and codicil of the above named Reginald Orton Bradley dated, respectively, 18 March 1939 and 20 September 1941.

Section 2 **Park**: amended, on 6 April 1994, by section 2 of the R O Bradley Estate Amendment Act 1994 (1994 No 2 (P)).

3 Constitution of Board

- (1) There is hereby constituted, for the purposes of this Act, a Board to be called the Orton Bradley Park Board.
- (2) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may do and suffer.

4 Membership of Board

The members of the Board shall be permanent residents in the Province of Canterbury appointed as follows:

- (a) a person appointed by the Governor-General on the advice of the Minister of Lands the appointee to be the chairman of the Board:
- (b) a person appointed by the Christchurch City Council:
- (c) a person appointed by the Lyttelton Borough Council: or such other local body or bodies for the time being administering the area at present administered by the Lyttelton Borough Council:
- (d) a person appointed by the Mount Herbert County Council or such other local body or bodies for the time being administering the area at present administered by the Mount Herbert County Council:
- (e) a person appointed by the Akaroa County Council or such other local body or bodies for the time being administering the area at present administered by the Akaroa County Council:
- (f) a person appointed by the Canterbury Horticultural Society Incorporated:

- (g) a person appointed by the Automobile Association (Central) Incorporated:
- (h) a person appointed by the Canterbury Branch of the Royal Forest and Bird Protection Society of New Zealand (Incorporated):
- (i) a person appointed by the Canterbury Arboretum Association Incorporated:
- (j) a person appointed by the Committee of the Canterbury (Central) Farm Forestry Association or other such association or corporate body for the time being carrying on the functions at present performed by the said Committee of the Canterbury (Central) Farm Forestry Association:
- (k) until 1 year after the death of the last surviving life tenant of the said estate, a person appointed by the trustee or trustees for the time being of the estate, who may be such a trustee.

Section 4(g): amended, on 6 April 1994, by section 3 of the R O Bradley Estate Amendment Act 1994 (1994 No 2 (P)).

5 Committees

- (1) The Board may from time to time appoint, discharge, alter, continue, or reconstitute such committees as it thinks fit to advise it on such matters concerning its functions as are referred to them by the Board.
- (2) Every person appointed to be a member of such a committee shall be a permanent resident in the Province of Canterbury.
- (3) Any person may be appointed to be a member of such a committee notwithstanding that he is not a member of the Board.

6 Chairman of committees

- (1) Each committee shall elect its own chairman annually.
- (2) Each committee shall carry out such duties as shall be laid down by the Board and in other respects as the committees shall themselves determine.

7 Term of office of members of the Board

- (1) Subject to subsection (3), every member of the Board appointed pursuant to paragraphs (b), (c), (d), and (e) of section 4 shall hold office until a new appointment is made.
- (2) Every other member of the Board shall hold office for 3 years and shall, unless his seat sooner becomes vacant, continue in office until a successor is appointed.
- (3) The office of any member of the Board shall become vacant if the member—
 - (a) becomes bankrupt; or
 - (b) is convicted of any offence punishable by imprisonment for a term of 1 year or more; or
 - (c) becomes mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
 - (d) becomes a protected person within the meaning of the Protection of Personal and Property Rights Act 1988; or
 - (e) resigns his office by notice in writing to the Board; or
 - (f) is absent without leave from 4 consecutive meetings of the Board; or
 - (g) dies; or
 - (h) ceases to be a permanent resident in the Province of Canterbury.
- (4) The powers of the Board shall not be affected by any vacancy in its membership, and the validity of any act of the Board shall not be affected or called into question by reason of any defect or informality in the appointment of any member of the Board.

Section 7(3)(c): amended, on 1 November 1992, pursuant to section 137(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Section 7(3)(d): amended, on 1 October 1988, pursuant to section 113 of the Protection of Personal and Property Rights Act 1988 (1988 No 4).

8 Appointment of members of Board

- (1) Within 6 months after the death of the said surviving life tenant of the estate all persons and bodies having the right to appoint a member of the Board shall do so and each notification of every such appointment shall be forwarded to the trustees of the estate.

- (2) Within 1 month after receipt of the last of such appointments a first meeting of the Board shall be called by the trustees of the estate and a notice posted to each of the said members of the Board at his last known or usual place of abode or business.

9 Meetings of Board

- (1) Meetings of the Board shall be held at such times and places as the Board or the chairman from time to time determines.
- (2) All questions before the Board shall be decided by a majority of the votes recorded thereon.

10 Procedure at meetings of Board and committees

- (1) The chairman of the Board and of each committee shall preside at every meeting of the Board or committee at which he is present, but in his absence from any meeting the members present shall appoint one of their number to preside at the meeting.
- (2) At any meeting of the Board or of a committee the person presiding shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.
- (3) At every meeting of the Board 5 members shall form a quorum and no business shall be transacted at any meeting unless a quorum is present.
- (4) Subject to the provisions of this Act, the Board may regulate its procedure in such manner as it thinks fit.

11 Contracts by Board

- (1) Any contract which, if made between private persons, must be by deed shall, if made by the Board, be in writing under the seal of the Board.
- (2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Board, be either in writing under the seal of the Board or in writing signed by any 2 members of the Board on behalf of and by direction of the Board.
- (3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Board by any member acting by direction of the Board, but

no oral contract shall be made involving the payment by the Board of a sum exceeding \$20.

- (4) Notwithstanding anything in subsections (1) to (3), no contract made by or on behalf of the Board shall be invalid by reason only that it is not made in the manner prescribed by this section if it is made pursuant to a resolution of the Board or to give effect to a resolution of the Board.

12 Powers of Board

Subject to the provisions of this Act—

- (a) the Board shall have all the powers, authorities, and discretions conferred upon the trustees by the will, and the power to accept donations and gifts for the purposes of the Park;
- (b) except as otherwise provided, in this Act, all the provisions of the will shall, unless the context otherwise requires, enure and take effect as fully in all respects as if they were expressly set out herein and as if references therein to the Board of Control and to the trustees were references to this Act and to the Board, respectively.

12A Further powers of Board

- (1) The Board shall be entitled to purchase, exchange, take on lease, or otherwise acquire any real or personal property for any of the purposes of the Park.
- (2) The Board shall not be entitled to sell any portion of the Park otherwise than—
- (a) for the purpose of boundary adjustments or for the better provision of access either to the Park or any adjoining property; and
- (b) pursuant to a unanimous resolution of the Board.
- (3) The proceeds of any such sale shall be held by the Board for the purposes of the Park.
- (4) The sale by the Board of all or any of the following parcels of land comprising part of the Park, namely—
- (a) the parcel of land comprising 549 square metres, more or less, situated in Block VIII of the Halswell Survey District, being Lot 5, DP 11299, being part of Rural Sec-

- tion 124 and being all the land comprised and described in Certificate of Title 455/209 (Canterbury Registry):
- (b) the parcels of land being parts respectively of Rural Sections 30478, 124, and 129, being parts of the land comprised and described in Certificate of Title 9B/871 (Canterbury Registry) and situated to the north of the Christchurch-Purau Highway—
- shall be deemed to be a boundary adjustment for the purposes of subsection (2)(a).

Section 12A: inserted, on 6 April 1994, by section 4 of the R O Bradley Estate Amendment Act 1994 (1994 No 2 (P)).

13 Purposes declared charitable

It is hereby declared that the purposes of the Park and of the Board are charitable purposes.

14 Refund of expenditure by Board members

The members of the Board shall be entitled to receive from the funds of the Board a refund of all moneys reasonably expended by them in respect of their attendance at meetings of the Board or otherwise in transacting the business of the Board.

15 Books of account

The Board shall cause proper books of account to be kept in respect of all matters relating to the trust estate.

16 Annual financial report

- (1) At the end of each financial year ending with 30 June the Board shall cause to be prepared a report of the operations of the Board for the year.
- (2) The report shall contain a statement of the total assets and liabilities as at the end of the year, together with an account of receipts and payments and of income and expenditure showing the financial transactions for the year.
- (3) No person shall be qualified for appointment as auditor of the Board unless he would be qualified for appointment as auditor of a company under the Companies Act 1955.

Section 16(1): amended, on 6 April 1994, by section 5 of the R O Bradley Estate Amendment Act 1994 (1994 No 2 (P)).

17 Exemption of Board members from personal liability

No member of the Board shall be personally liable for any act done or omitted by the Board or by any member thereof in good faith in the course of the operations of the Board.

18 Power and duties of the trustees

(1) Until the death of the last surviving life tenant of the estate and the appointment of members of the Board and the payment conveyance and delivery to the Board of all real and personal property forming the said estate, all real and personal property of the estate not so paid conveyed and delivered to the Board shall remain vested in the trustees who shall continue to exercise all the powers and discretions vested in them by the will in respect thereof.

(2) Within 1 year after the death of the last surviving life tenant the trustees shall pay, convey, and deliver to the Board all real and personal property forming the said estate, subject to all liabilities owing by the trustees including all moneys for the time being owing under Mortgage No 725218 or any other mortgage charged upon the said land, and subject also to all easements affecting the same; and at the same time the Board shall give to the trustees a release and discharge from all further liability and the trustees shall thereupon be discharged from the office of trustee:

provided that, if any accounts of the trustees shall not be approved by the Board, the trustees shall have the right, within 3 months after the delivery of those accounts to make application to the High Court for a discharge from the trusteeship either unconditionally or subject to such conditions as the High Court may order:

provided also that nothing in this Act shall be held to create any liability to fall on the trustees on account of anything made, done, or omitted, by the trustees for which the trustees would not have been liable had this Act not been enacted:

provided further that nothing herein contained shall be deemed to in any way prejudice any right to apply to the High Court for relief from any liability which would have been open to the trustees in respect of anything made, done, or omitted by the trustees had this Act not been enacted.

- (3) All contracts made by the trustees before and after the passing of this Act in the exercise of their powers under the will and under this Act shall, on the assumption of office by the Board, be deemed to have been made by the Board.
- (4) All debts and liabilities incurred by the Trustees before and after the passing of this Act in the exercise of their powers under the will and under this Act shall, on the assumption of office by the Board, become the debts and liabilities of the Board.

Section 18(2) first proviso: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 18(2) third proviso: amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

19 Park to be held by Board

When the land included in the estate is transferred to the Board under section 18 it shall be held by the Board, subject to section 12A(2), in perpetuity as a park to be known as the Orton Bradley Park.

Section 19(1): amended, on 6 April 1994, by section 6 of the R O Bradley Estate Amendment Act 1994 (1994 No 2 (P)).

20 Wishes of the testator

The trustees, the Board, and the committees, in the carrying out of all powers, duties and discretions vested in them by the said will and this Act shall at all times take into consideration the wishes of the testator as evidenced by the terms of the will which refer to the constitution and administration of the Park and also the provision of reasonable amenities for members of the general public such as the provision of facilities for a golf club and the playing of lawn tennis, both of which were provided for by the testator during his lifetime and are still in existence:

provided that nothing in this section shall confer any legal liability on the trustees or the Board or the committees or any fetter on the exercise of the powers and discretions vested in them according to what they may in their absolute discretion determine to be in the best interests of the estate of the testator, having regard to the provisions of the will and of this Act.

21 Inclusion of certain land not owned by the testator

In this Act, references to the estate of the testator shall be deemed to include the 2 parcels of land comprised and described in certificates of title Volume 455, folio 209, and Volume 514, folio 247, Canterbury Land Registry in the same manner in all respects as if the said land had been owned by the testator at the time of his death.

22 Private Act

This Act is hereby declared to be a private Act.

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Notes**1 General**

This is a reprint of the R O Bradley Estate Act 1972. The reprint incorporates all the amendments to the Act as at 1 January 2004, 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)*

Supreme Court Act 2003 (2003 No 53): section 48(1)

R O Bradley Estate Amendment Act 1994 (1994 No 2 (P))

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46): section 137(1)

Protection of Personal and Property Rights Act 1988 (1988 No 4): section 113

Judicature Amendment Act 1979 (1979 No 124): section 12
