



ANALYSIS

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1999, No. 54

An Act to make continued provision for the operation of the community trusts established under the Trustee Banks Restructuring Act 1988 [20 May 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Community Trusts Act 1999.

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

2. Purpose of this Act—The purpose of this Act is to make provision for the continued operation of the community trusts that were established under the Trustee Banks Restructuring Act 1988 to acquire the shares in the capital of a trustee bank's successor company.

3. Act to bind the Crown—This Act binds the Crown.

4. Interpretation—In this Act, unless the context otherwise requires,—

“Community trust” means a community trust established under Part II of the Trustee Banks Restructuring Act 1988 to acquire the shares in the capital of a trustee bank's successor company and for the purposes specified in this Act:

“Inland Revenue Acts” means the Acts specified in the Schedule of the Tax Administration Act 1994:

“Minister” means the Minister of Finance:

“Trustee bank” means a trustee bank established under the Trustee Banks Act 1983:

“Trustee bank's successor company”, in relation to a trustee bank, means a company formed and registered by that trustee bank and in which the undertaking of the trustee bank was vested under the Trustee Banks Restructuring Act 1988.

Trustees of Community Trusts

5. Appointment of trustees—(1) The office of trustee of a community trust must be filled in the manner prescribed in the trust deed.

(2) Every trustee must be appointed for a term not exceeding the maximum term of office for trustees permitted by the trust deed.

(3) The maximum term of office for trustees permitted by a trust deed must not exceed 4 years.

(4) A trustee may hold office on more than 1 occasion.

(5) Despite subsections (2) and (3), where the term of office of a trustee expires, that trustee, unless sooner vacating office or being removed from office under section 6, continues to hold office by virtue of the appointment for the expired term until—

(a) The trustee is reappointed; or

- (b) A successor to the trustee is appointed; or
- (c) The trustee is advised in writing by the Minister that the trustee will not be reappointed and that a successor to the trustee will not be appointed.

Cf. 1988, No. 90, s. 15 (2), 17 (2), (3)

6. Resignation and removal of trustees—(1) A trustee of a community trust may resign office in the manner prescribed in the trust deed.

(2) A trustee is deemed to have resigned office if at any time he or she is prohibited from acting as a trustee by section 7.

(3) The Governor-General may remove a trustee from office if—

- (a) Disability in relation to the performance of his or her duties as a trustee, neglect of duty, or misconduct is proved to the satisfaction of the Governor-General; or
- (b) The Governor-General is satisfied on reasonable grounds that the trustee has acted or is acting in a manner which is, or is likely to be, prejudicial to the interests of the trust.

(4) If a trustee dies, resigns, or ceases to hold office, the office of the trustee becomes vacant and must be filled in the manner prescribed by the trust deed.

(5) Any person filling a vacancy under subsection (4) holds office for the remainder of that trustee's term of office.

Cf. 1988, No. 90, s. 17 (4), (5), (6), (7)

7. Disqualification of trustees—A person must not be appointed or reappointed, or hold office as a trustee of a community trust, if he or she is—

- (a) A bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled;
- (b) Convicted of an offence punishable by imprisonment for a term of 2 years or more;
- (c) Convicted of an offence punishable by a term of imprisonment of less than 2 years and is sentenced to imprisonment for that offence;
- (d) Subject to an order made under section 383 of the Companies Act 1993;
- (e) A person to whom section 151 (2) (ba) or section 151 (2) (c) of the Companies Act 1993 applies:

(f) Mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992:

(g) Not resident in the area or region of the trust:

(h) Employed in the service of, or holding an office (other than the office of director) in, a trustee bank's successor company in which that trust holds shares.

Cf. 1988, No. 90, s. 16

8. Liability insurance for trustees—(1) A community trust may directly or indirectly effect insurance for a trustee of the trust but only in respect of—

(a) Liability, not being criminal liability, for an act or omission in his or her capacity as a trustee; or

(b) Costs incurred by that trustee in defending or settling a claim or proceeding relating to that liability; or

(c) Costs incurred by that trustee in defending criminal proceedings in which the trustee is acquitted.

(2) Effecting the insurance must be expressly authorised by the trust deed and have the prior approval of the trustees.

(3) The trustees who vote in favour of authorising the effecting of the insurance must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the community trust.

(4) A trustee is personally liable to the community trust for the cost of effecting insurance if—

(a) Subsections (1) and (2) have not been complied with; or

(b) The relevant provisions of the trust deed have not been complied with; or

(c) Reasonable grounds did not exist for the opinion set out in the certificate given under subsection (3).

(5) A trustee is not personally liable to the community trust under subsection (4) to the extent that the trustee proves that the cost of effecting the insurance was fair to the community trust at the time the insurance was effected.

(6) In this section,—

(a) “Effect insurance” includes pay, whether directly or indirectly, the costs of the insurance:

(b) “Trustee” includes a former trustee.

Cf. 1993, No. 105, s. 162 (1), (5), (6), (8), (9)

9. Indemnities of trustees void—An indemnity given by a community trust to a trustee of that trust in respect of liability for acts or omissions in his or her capacity as a trustee, or costs incurred by the trustee relating to that liability, is void.

10. Trustees not to be employed by successor companies—(1) A trustee of a community trust must not be employed in the service of, or hold an office in, a trustee bank's successor company in which that trust holds shares.

(2) Despite subsection (1), a trustee may be appointed, or hold office, as a director of the company.

Cf. 1988, No. 90, s. 23

Regional Identity and Purposes of Community Trusts

11. Regional identity of community trusts—(1) A community trust must remain established in respect of the area or region which corresponds with the area of operation of the trustee bank (as prescribed under section 28 of the Trustee Banks Act 1983), the undertaking of which was transferred to that bank's successor company, in which the trust holds shares, or held shares at the time of its establishment.

(2) This section is subject to sections 17 and 18.

Cf. 1988, No. 90, s. 18

12. Purposes of community trusts—(1) Property vested in, or belonging to, a community trust must be—

- (a) Held on trust to be applied for charitable, cultural, philanthropic, recreational, and other purposes; and
- (b) Applied for purposes that are beneficial to the community principally in the area or region of the trust.

(2) The purposes of a community trust are deemed to be charitable for the purposes of the application to a community trust of any enactment or rule of law.

(3) Despite subsection (2), the application to a community trust of the Inland Revenue Acts or any other enactment that imposes or provides for the collection of a tax, duty, levy, or other charge is not affected.

Cf. 1988, No. 90, s. 21

Operational Requirements Relating to Community Trusts

13. Community trusts must comply with Financial Reporting Act 1993—(1) A community trust must comply with the Financial Reporting Act 1993 as if it were a reporting entity within the meaning of section 2 of that Act.

(2) The trustees of a community trust are deemed to be directors within the meaning of section 2 of the Financial Reporting Act 1993.

(3) Sections 15, 16 (1), 38 (a), and 40 of the Financial Reporting Act 1993 apply to a community trust as if it were an issuer within the meaning of section 4 of that Act.

(4) Despite section 7 of the Financial Reporting Act 1993, the balance date of a community trust is the close of 31 March.

(5) In addition to complying with section 8 of the Financial Reporting Act 1993, the financial statements of a community trust must show separately—

(a) The names of persons or organisations to whom distributions of income and capital have been approved or paid by the community trust under section 12 in that financial year; and

(b) The amounts approved or paid.

(6) Despite section 15 (2) of the Financial Reporting Act 1993, an auditor appointed by the trustees of a community trust—

(a) Must be appointed in accordance with the provisions of the Companies Act 1993 which, for that purpose, apply with such modifications as may be necessary; and

(b) Must not be a trustee, employee, or agent of the trust.

(7) Unless directed otherwise by the Minister, the trustees of a community trust must, not later than 31 August in each year,—

(a) Send the financial statements and the auditor's report to the Minister; and

(b) Publish copies of the financial statements and the auditor's report—

(i) In the *Gazette*; and either

(ii) In 1 or more principal newspapers circulating in the area or region of the trust; or

(iii) By distribution to every household in that area or region.

(8) Despite subsection (7) (b), the trustees are not required to publish in the *Gazette* the information specified in subsection (5) if the trustees publish in the *Gazette*, with the financial statements and auditor's report, a statement that a list of all distributions of income and capital approved or paid by the community trust in the relevant financial year is available, on request, from the office of the trust.

Cf. 1988, No. 90, s. 24 (3), (6)

14. Trustees must hold public meeting—(1) The trustees of a community trust must hold a public meeting in the area or region of the trust not later than 31 October in each year.

(2) The trustees must give not less than 14 days' notice of the meeting in 1 or more principal newspapers circulating in the area or region of the trust.

(3) At the meeting the trustees must report on—

- (a) The operation of the trust during the preceding financial year; and
- (b) The financial statements of the trust for that year.

Cf. 1988, No. 90, s. 25

Contents of Trust Deeds

15. Provisions required in trust deed—The trust deed of a community trust must contain provisions—

- (a) Specifying the number of trustees:
- (b) For the holding of, and voting at, meetings of trustees:
- (c) Specifying the quorum required for the holding of meetings of trustees:
- (d) For the remuneration of trustees:
- (e) Specifying the manner in which a vacancy in the office of trustee must be filled:
- (f) For the appointment of officers, employees, managers, and agents:
- (g) Specifying the investment powers of trustees:
- (h) Specifying the powers of trustees to expend capital and income of the trust:
- (i) For the keeping of accounts:
- (j) Specifying the manner in which the trust deed may be varied:
- (k) Specifying any other matters that the Minister considers appropriate.

Cf. 1988, No. 90, s. 26

16. Trust deed and amendments not to be inconsistent with this Act—(1) A provision in the trust deed of a community trust must not be inconsistent with this Act.

(2) A trust deed must not be varied in a manner that is inconsistent with this Act.

(3) A provision in the trust deed of a community trust, or a variation of a trust deed, which is inconsistent with this Act is of no effect.

Cf. 1988, No. 90, s. 27

Restructuring of Community Trusts

17. Merger of community trusts—(1) The trustees of 2 or more community trusts may, in accordance with a resolution

passed by not less than 75% of the trustees of each trust, submit to the Minister a scheme for the amalgamation of those trusts into a single community trust.

(2) A scheme submitted under subsection (1) must—

(a) State the names of the existing community trusts:

(b) State the names of the trustees of the existing community trusts:

(c) Have annexed to it the trust deeds establishing the existing community trusts:

(d) Have annexed to it a proposed trust deed for the proposed community trust on which the property, rights, assets, and liabilities of the existing community trusts are proposed to be held:

(e) State the names, addresses, and occupations of the proposed trustees of the proposed community trust:

(f) Contain a summary of any submissions made under subsection (4):

(g) Contain such other matters as may be appropriate:

(h) Be dated.

(3) The trustees of the existing community trusts must supply to the Minister any additional information relating to the scheme required by the Minister.

(4) Before submitting a scheme to the Minister under subsection (1), the trustees of each existing community trust must—

(a) Give notice in the *Gazette* and in 1 or more principal newspapers circulating in the area or region of the trust—

(i) Stating that the trustees of the trust intend to submit the scheme to the Minister; and

(ii) Specifying details of the scheme; and

(iii) Stating that any person residing in the area or region of the trust may, within 28 days after the last publication of the notice, make written submissions to the trustees regarding the scheme; and

(b) Have regard to any submissions made within that period.

(5) The Governor-General may on the advice of the Minister, by Order in Council, approve a scheme for the amalgamation of 2 or more existing community trusts referred to in the order.

(6) On a date specified in the order—

(a) The new community trust on which the property, rights, assets, and liabilities of each of the existing community trusts are proposed to be held is deemed to be established on the terms in the proposed trust

- deed submitted to the Minister under subsection (1); and
- (b) The persons proposed for appointment as trustees of the trust under the scheme are appointed as trustees of the new community trust; and
 - (c) The property, rights, assets, and liabilities of each of the existing community trusts vest in those trustees in the manner specified in the order, and are held by them on and subject to the trusts contained in the trust deed; and
 - (d) The existing community trusts are dissolved; and
 - (e) The trustees of the existing community trusts cease to hold office as trustees of those trusts.
- (7) The area or region of the new community trust established under subsection (6) (a) must correspond with the area or region of the existing community trusts referred to in subsection (2) (a).
- (8) This Act applies with any necessary modifications to every new community trust established under this section and to the trustees of those trusts.

Cf. 1988, No. 90, s. 19

18. Formation of separate community trusts in place of existing community trust—(1) The trustees of a community trust may, in accordance with a resolution passed by not less than 75% of the trustees, submit to the Minister a scheme for the formation of 2 or more separate community trusts in place of that community trust.

- (2) A scheme submitted under subsection (1) must—
 - (a) State the name of the existing community trust;
 - (b) State the names of the trustees of the existing community trust;
 - (c) Have annexed to it the trust deed establishing the existing community trust;
 - (d) Have annexed to it the trust deeds for the proposed community trusts on which the property, rights, assets, and liabilities of the existing community trust are proposed to be held;
 - (e) Specify the property, rights, assets, and liabilities of the existing community trust which it is proposed will be held by each of the proposed community trusts;
 - (f) State the names, addresses, and occupations of the persons who it is proposed will be trustees of the proposed community trusts:

- (g) Contain a summary of any submissions made under subsection (4):
- (h) Contain such other matters as may be appropriate:
 - (i) Be dated.
- (3) The trustees of the existing community trust must supply to the Minister any additional information relating to the scheme required by the Minister.
- (4) Before submitting a scheme to the Minister under subsection (1), the trustees of the existing community trust must—
 - (a) Give notice in the *Gazette* and in 1 or more principal newspapers circulating in the area or region of the trust—
 - (i) Stating that the trustees of the trust intend to submit the scheme to the Minister; and
 - (ii) Specifying details of the scheme; and
 - (iii) Stating that any person residing in the area or region of the trust may, within 28 days after the last publication of the notice, make written submissions to the trustees regarding the scheme; and
 - (b) Have regard to any submissions made within that period.
- (5) The Governor-General may on the advice of the Minister, by Order in Council, approve a scheme for the formation of separate community trusts in place of an existing community trust referred to in the order.
- (6) On a date specified in the order,—
 - (a) The new community trusts on which the property, rights, assets, and liabilities of the existing community trust are proposed to be held are established on the terms in the proposed trust deeds submitted to the Minister under subsection (1); and
 - (b) The persons proposed for appointment as trustees of the trusts under the scheme are appointed as trustees of the new community trusts; and
 - (c) The property, rights, assets, and liabilities of the existing community trust vest in those trustees in the manner specified in the order and are held by them on and subject to the trusts contained in the trust deeds; and
 - (d) The existing community trust is dissolved; and
 - (e) The trustees of the existing community trust cease to hold office as trustees of that trust.
- (7) The area or region of each new community trust established under subsection (6) (a) is the part of the area or region of the existing community trust referred to in subsection (2) (a) as is specified in the order.

(8) This Act applies with any necessary modifications to every new community trust established under this section and to the trustees of those trusts.

Cf. 1988, No. 90, s. 20

Other Matters

19. Sale of shares in trustee bank's successor company—The trustees of a community trust may sell or otherwise dispose of any shares held by the trust in the capital of a trustee bank's successor company if a resolution has been passed by not less than 75% of the trustees approving the sale or disposition.

Cf. 1988, No. 90, s. 22 (1)

20. Section 64 of Reserve Bank of New Zealand Act 1989 not to apply to community trusts—Section 64 of the Reserve Bank of New Zealand Act 1989 does not apply to—

- (a) A community trust:
- (b) The incorporation of the trustees of a community trust under Part II of the Charitable Trusts Act 1957.

Cf. 1988, No. 90, s. 14 (4)

21. Application of Trustee Act 1956 not affected—

(1) The Trustee Act 1956 applies to a community trust.

(2) Despite section 2 (4) of the Trustee Act 1956, if the trustees of a community trust are not a body corporate, the powers conferred on a trustee by the Trustee Act 1956—

- (a) Are in addition to the powers given by this Act and the instrument creating the trust:
- (b) Unless otherwise stated, apply and have effect subject to any contrary intention expressed in this Act or the instrument creating the trust.

(3) Despite section 2 (5) of the Trustee Act 1956, if the trustees of a community trust are a body corporate, the powers conferred on that body corporate by the Trustee Act 1956—

- (a) Are in addition to the powers given by this Act, the instrument creating the trust, and the powers given by any Act under which the trustees are incorporated:
- (b) Unless otherwise stated, apply and have effect subject to any contrary intention expressed in this Act or the instrument creating the trust:

(c) Unless otherwise stated, apply and have effect subject to any contrary intention expressed in the Act under which the trustees are incorporated.

(4) Nothing in subsection (3) (c) affects any Act which applies to all trustees, whether corporations or not.

Cf. 1988, No. 90, s. 28

22. Fees—(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, make regulations prescribing or providing for fees or charges payable by community trusts to the department for the provision of services by the department.

(2) The regulations may—

(a) Prescribe the services for which fees or charges are payable:

(b) Prescribe or provide for the amounts of any fees or charges or the method or rates by which they are to be assessed:

(c) Prescribe the method of payment of any fees or charges:

(d) Prescribe the circumstances in which payment of the whole or any part of the fees or charges may be remitted or waived.

(3) A fee or charge imposed by regulations made under subsection (1)—

(a) Must be reasonable having regard to the expenses incurred or to be incurred by the department in providing a service in relation to the community trust by which the fee or charge is payable; and

(b) Is payable to the department and recoverable in a court of competent jurisdiction as a debt due to the Crown.

(4) The Minister must not recommend the making of an Order in Council that imposes or increases a fee or charge unless the Minister has previously consulted all interested community trusts.

(5) In this section, “department” means the department of State that, under an enactment or with the authority of the Prime Minister, is for the time being responsible for the relevant function or matter.