

Mr Douglas

ANGLICAN CHILDREN'S TRUST AMENDMENT

[PRIVATE]

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A BILL INTITULED

An Act to change the name of the Church of England Children's Trust to the Anglican Children's Trust and to amend the Church of England Children's Trust Act 1962

- 5 WHEREAS the Church of the Province of New Zealand pur-
suant to sundry resolutions of the General Synod of the said
Church is now commonly called the Anglican Church rather
than the Church of England: And whereas it is desired to
10 to the Anglican Children's Trust and consequent thereon to
amend the Short Title of the Church of England Children's
Trust Act 1962: And whereas section 10 of that Act provides
that nothing in sections 8 or 9 of that Act (which relate to the
power of the Church of England Children's Trust in the
15 administration of its property) shall authorise the Trust to
subscribe for or purchase shares or stock in any company
and it is desired that the said restriction be removed:
And whereas the Orphan Home Trust Board was incor-
porated under the provisions of the Religious, Charitable,
20 and Educational Trust Boards Incorporation Act 1884: And

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whereas by the Church of England Children's Trust Act 1962 the name of the said Board was changed to the Church of England Children's Trust, a constitution and rules were provided for the said Board, and certain powers were conferred upon it: And whereas by Declaration of Trust dated the fifth day of May, nineteen hundred and ten, a trust was created whereby the ownership, control, and management of a children's home previously established at Brighton Road, Auckland, was vested in a Board of Trustees subsequently incorporated under the Religious, Charitable, and Educational Trusts Act 1908, under the name of the Children's Home Trust Board, the said Declaration of Trust *inter alia* empowering the Trustees by a two-thirds majority to transfer the property and assets of the Trust to any existing or new body of trustees having objects similar to those of the said Trust, namely to benefit orphan, destitute, neglected, or poor children: And whereas by a further Declaration of Trust dated the twenty-third day of December, nineteen hundred and ten, the said Children's Home Trust Board declared that it held certain land situated at Richmond Road, Auckland, upon the same trusts as those set out in the said declaration dated the fifth day of May, nineteen hundred and ten, and the establishment of the children's home aforesaid was thereupon removed from the Brighton Road premises to new premises situated on the said land at Richmond Road: And whereas in or about the year nineteen hundred and twenty-eight the relatives of the late Sir Henry Brett gave certain property at Takapuna to the Diocese of Auckland of the Church of the Province of New Zealand and that Diocese in turn directed that such property and other adjoining land should be held by the Children's Home Trust Board and the said property and land was transferred to the said Board upon trust for the said Diocese: And whereas in or about October, nineteen hundred and twenty-nine the said Diocese purported to create by a Statute of Synod a separate Board of Trustees which was duly incorporated under the name of The Henry Brett Memorial Home Trust Board in terms of the Religious, Charitable and Educational Trusts Act 1908 to manage and control the said property at Takapuna known as the Brett Home and it was resolved that the said property together with adjoining property subsequently purchased should be held for and on behalf of the said Diocese for the purposes of a home for orphan, destitute, neglected, or poor children: And whereas on the eighth day of October, nineteen hundred and twenty-nine, the Children's Home Trust Board resolved pursuant to the powers conferred upon it under clause 5 of the Declaration of Trust dated the fifth day of May, nine-

teen hundred and ten, aforesaid that the Richmond Road Home be closed and disposed of and that the proceeds of sale thereof and the investments held by the said Board and any gifts or legacies that might thereafter be given or bequeathed
5 to the said Board be transferred to The Henry Brett Memorial Home Trust Board as an endowment fund for the said Henry Brett Memorial Home, and that the last-named Board be authorised by the Children's Home Trust Board to give receipts and discharges for any amounts which might there-
10 after be given and bequeathed to the Children's Home Trust Board but such resolution was not fully carried into effect and certain assets presently remain vested in the Children's Home Trust Board as trustee for and at the disposal of The Henry Brett Memorial Home Trust Board: And whereas the said
15 Richmond Road Home was closed in or about the month of January, nineteen hundred and thirty, and thereafter the said property was leased to divers persons and subsequently sold in or about the month of February, nineteen hundred and forty-four: And whereas on the nineteenth day of August,
20 nineteen hundred and thirty-one, the Children's Home Trust Board resolved that the members of The Henry Brett Memorial Home Trust Board be appointed members of the Children's Home Trust Board: And whereas from and after the month of July, nineteen hundred and thirty-seven, the Chil-
25 dren's Home Trust Board ceased to carry out any active function and the assets remaining vested in that Board have ever since been administered by The Henry Brett Memorial Home Trust Board: And whereas the purposes of the Church of England Children's Trust (to be renamed the
30 Anglican Children's Trust) and The Henry Brett Memorial Home Trust Board are essentially similar and it is considered that it is economically and otherwise desirable that the activities and funds of the said Boards should be merged and be under one and the same control and that the property and
35 funds of The Henry Brett Memorial Home Trust Board, including the assets held on its behalf as trustee by the Children's Home Trust Board, should be transferred to and vested in the Church of England Children's Trust to be renamed as aforesaid to be administered by it as part of its own assets
40 and undertaking: And whereas the exact limits of the powers of the trustees of the Children's Home Trust Board and the Henry Brett Memorial Home Trust Board are obscure and it is expedient to remove all possible doubt as to whether any acts of the trustees of the Children's Home Trust Board and
45 The Henry Brett Memorial Home Trust Board respectively in

or about the administration of the affairs of the said Boards as such were within the powers and authority of the said trustees: And whereas it is desired that any bequests, legacies, or gifts hereafter given or made to The Henry Brett Memorial Home Trust Board or the Children's Home Trust Board shall vest in the said Church of England Children's Trust to be renamed as aforesaid: And whereas in terms of clause 5 of the will of the late James Murphy of Otahuhu dated the sixteenth day of August, nineteen hundred and twenty-seven, certain property was bequeathed to the trustee appointed under the said will upon trust for the Orphan Home Trust Board (now named the Church of England Children's Trust and to be renamed the Anglican Children's Trust) to be used or the rent, income, and profits thereof applied for the benefit and purposes of a certain orphan home at Papatoetoe the conduct of which home has been discontinued upon the sale thereof to Her Majesty the Queen in the year nineteen hundred and sixty-three (the proceeds of such sale being utilised in and about the affairs of the Trust) but it is desired that the action of the said trustee under the said will in continuing to make payments of moneys envisaged by the said clause to such Board be confirmed and validated notwithstanding that the conduct of the said orphan home had been discontinued as aforesaid, and that future payments by the said trustee to such Board of moneys accruing and envisaged in terms of the said clause be authorised and permitted: And whereas it is desired to remove all possible doubt as to the exact boundary of the property of The Henry Brett Memorial Home Trust Board fronting on Lake Pupuke: And whereas it is desired to amend the Church of England Children's Trust Act 1962 aforesaid to give effect to the foregoing:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Anglican Children's Trust Amendment Act 1968, and shall be read together with and deemed part of the Act heretofore known as the Church of England Children's Trust Act 1962 (hereinafter referred to as the principal Act).

2. Change of name—(1) The principal Act may hereafter be cited as the Anglican Children's Trust Act 1962.

(2) The principal Act is hereby amended by omitting from section 1, and also from subsection (1) of section 7, the words "Church of England", and substituting in each case the word "Anglican".

(3) All references to the Church of England Children's Trust Act 1962 or to the Church of England Children's Trust in any other enactment or in any document whatsoever shall hereafter, unless the context otherwise requires, be read as references to the Anglican Children's Trust Act 1962 and to the Anglican Children's Trust respectively.

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

15 "Children's Home Trust Board" means the Board of Trustees incorporated on the first day of September, nineteen hundred and ten, pursuant to the Religious, Charitable, and Educational Trusts Act 1908, under the name of the Children's Home Trust Board:

20 "Family home" means an establishment wherein children are brought up as far as may be in the atmosphere and surroundings of a normal household:

"Henry Brett Memorial Home Trust Board" means the Board of Trustees incorporated in June, nineteen hundred and thirty, pursuant to the Religious, Charitable, and Educational Trusts Act 1908, under the name of The Henry Brett Memorial Home Trust Board:

30 "Registrar" has the same meaning as in the Land Transfer Act 1952.

4. Prohibition on purchase of shares in companies removed—Section 10 of the principal Act is hereby repealed.

5. Dissolution of Children's Home Trust Board and Henry Brett Memorial Home Trust Board and provision incidental thereto—(1) The Children's Home Trust Board and the Henry Brett Memorial Home Trust Board are hereby dissolved.

(2) Notwithstanding anything to the contrary in any Act or rule of law, but subject to subsection (3) and to subsection

(4) of this section, all real and personal property whatsoever (including any equitable or similar interests and the benefit of any contracts and all rights and powers pertaining to any such interests or contracts) belonging to the Children's Home Trust Board or the Henry Brett Memorial Home Trust Board are hereby vested in the Anglican Children's Trust, subject to all liabilities, charges, and obligations affecting the same; and all debts and other liabilities lawfully incurred by those Boards and existing on the passing of this Act shall be debts and liabilities of the Anglican Children's Trust. 5 10

(3) The Anglican Children's Trust may exercise in relation to any property accruing to or vested in it under and by virtue of this Act without any limitation imposed by any specific trust affecting the same (other than the trust imposed by subsection (4) of this section) all or any of the powers and authorities set forth in paragraphs (a) to (k) of section 9 of the principal Act. 15

(4) The property vested in the Anglican Children's Trust under and by virtue of subsection (2) of this section and the income arising therefrom shall be utilised in acquiring a family home (or in the discretion of the Trust more than one such home) to be known as The Henry Brett Memorial Home or Homes, with power from time to time in the discretion of the Trust to vary the situation or manner of conduct of any such home or to discontinue the conduct of such home or homes for such period or periods as it may deem advisable: Provided that any funds from time to time available after provision, in the discretion of the Trust, has been made for the acquisition and maintenance of such home or homes may be utilised for the general purposes of the Trust or for such other purposes as may appear to the Trust necessary and expedient for the exercise and carrying out by the Trust of its objects, powers, and authorities, free of any specific trust or direction as to the manner of application of any such property. 20 25 30 35

6. Validation of acts of Children's Home Trust Board and Henry Brett Memorial Home Trust Board—(1) All acts purporting to be those of the Children's Home Trust Board or of The Henry Brett Memorial Home Trust Board and done in the bona fide exercise of the powers of such Boards respectively or for any of the charitable purposes authorised by the principal Act or this Act shall be deemed to have been duly and properly done and effected and to have been within their powers. 40

(2) No such act shall be open to challenge on the ground that it was beyond the powers of the trustees or outside their authority or that the Trust Boards or either of them were not duly constituted, nor shall any person affected thereby be
5 entitled to bring any action or exercise any other remedy at law or in equity in respect thereof.

7. Bequests, legacies, and gifts to vest in Trust—Any bequest, legacy, or gift which may on or after the commencement of this Act be given or made to or held in trust for or intended
10 for or for the purposes of the Children's Home Trust Board or The Henry Brett Memorial Home Trust Board shall, notwithstanding the dissolution of those Boards by this Act, vest in or be applied for the purposes of the Anglican Children's Trust, and any receipt or acceptance given by the Trust shall be a
15 valid and effective discharge in relation to such bequest, legacy, or gift.

8. Payment of moneys under trusts of will of James Murphy deceased—(1) All money paid before the commencement of this Act by the trustee of the will of James Murphy late of
20 Otahuhu deceased to the Anglican Children's Trust and purporting to have been paid pursuant to clause 5 of the said will shall be deemed to have been duly and properly paid and applied.

(2) The trustee of the said will of James Murphy deceased is
25 hereby authorised and empowered to continue to make payments to the said Trust pursuant to the said clause of the said will notwithstanding that the orphan home at Papatoetoe no longer exists as if the said clause had contained no reference to such orphan home.

9. Fixing of boundary of property—The boundary of the property of The Henry Brett Memorial Home Trust Board being the land described in Crown Grant No. 1851a (3G/617) of part Allotment 85, Parish of Takapuna, which fronts on Lake Pupuke is and shall be deemed always to have been the
35 average natural winter seasonal level of the waters of the said lake, being at a level of one hundred and fourteen decimal four feet above the Takapuna City Council datum point.

10. Registration—Every Registrar and every Registrar of Deeds is hereby authorised to cause to be made such entries in the registers and to do all such other things as may be necessary to give effect to the provisions of this Act.

11. Private Act—This Act is hereby declared to be a private Act. 5