

[AS REPORTED FROM THE JUSTICE AND LAW REFORM  
COMMITTEE]

*House of Representatives, 26 April 1989.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

*Hon. R. W. Prebble*

**ANGLICAN CHURCH TRUSTS AMENDMENT**

[PRIVATE]

ANALYSIS

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Preamble  
1. Short Title

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A BILL INTITULED

**An Act to widen the powers of variation of trusts in respect of land sold or given to the Anglican Church by Maori, and to amend the Anglican Church Trusts Act 1981**

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WHEREAS in the last century lands were sold or given to the Anglican Church, or people on behalf of the Church, by Maori for a purpose or purposes narrower or more restrictive than the trusts actually imposed on those lands by Crown Grant or otherwise when those lands were vested in the Church, or in people on behalf of the Church: AND WHEREAS in a number of cases it has become impossible or impracticable or inexpedient to carry out the object or purpose of the trust upon the land so sold or given or by using that land (other than by leasing it), or the amount of land available is inadequate to carry it out, or the object or purpose has been effected already: AND WHEREAS the powers of variation of trusts in the Charitable Trusts Act 1957 and the powers of variation in the

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Anglican Church Trusts Act 1981 do not always allow a variation to be made in these cases because of the wider trusts imposed by the Crown Grant or otherwise which might allow the land or the proceeds of the sale or lease of the land to be used elsewhere and outside the narrower or more restrictive purposes originally intended: AND WHEREAS any variation that might be approved is not likely to include an object or purpose not associated with or relating to the Church: AND WHEREAS the Maori understanding of Maori gift transactions differs from the principles of the law relating to charitable gifts: AND WHEREAS it is desirable to enable the High Court and the Anglican Church to have a wider power of variation of trusts in such cases to accommodate the Maori view and for other reasons: AND WHEREAS the objects of this Act cannot be achieved otherwise than by legislation:

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

**1. Short Title**—This Act may be cited as the Anglican Church Trusts Amendment Act (*1988*) 1989, and shall be read together with and deemed part of the Anglican Church Trusts Act 1981 (hereinafter referred to as the principal Act).

**2. Application of Part III**—Section 10 (3) of the principal Act is hereby amended by inserting, before the words “If any trust property”, the words “Except as allowed by the provisions of **section 16A** of this Act,”.

**3. Additional powers of variation of trusts**—The principal Act is hereby amended by inserting in Part III, after section 16, the following section:

“16A. (1) This section is in addition to and not in substitution for the powers of variation contained elsewhere in this Part of this Act, or in Part III of the Charitable Trusts Act 1957.

“(2) This section applies to land which is trust property and which has been established by General Synod, or by some tribunal authorised by General Synod in that behalf, after due inquiry to have been acquired from Maori for a purpose or purposes narrower or more restrictive than the trusts imposed on that land by Crown Grant or otherwise when the land was vested in the Church or any person on behalf of the Church.

*Struck Out*

“<sup>(3)</sup> If in respect of any land to which this section applies it becomes or has become impossible or impracticable or inexpedient to carry out the object or purpose of the trust upon that land or by using that land (other than by leasing it), or the amount of land available is inadequate to carry it out, or the object or purpose has been effected already, the trustee may, either under the provisions of sections 12 to 16 of this Act or under the provisions of Part III of the Charitable Trusts Act 1957, prepare or cause to be prepared a scheme for the application or disposal of the land for some other object or purpose of a kind specified in paragraph (b) of section 11 of this Act, but not necessarily directly or indirectly associated with or relating to the Church; and the Synod to which it is submitted or the Aotearoa Council or the New Zealand Advisory Council or the High Court as the case may be, notwithstanding any provisions of the Charitable Trusts Act 1957 or any rule of law to the contrary, shall have the power to approve the scheme if it otherwise complies with the provisions of this Act.

*New*

“<sup>(3)</sup> If in respect of any land to which this section applies it becomes or has become impossible or impracticable or inexpedient to carry out the object or purpose of the trust upon that land or by using that land (other than by leasing it), or the amount of land available is inadequate to carry it out, or the object or purpose has been effected already, the trustee may, in accordance with the succeeding provisions of this section, prepare or cause to be prepared a scheme for the application or disposal of the land for some other object or purpose of a kind specified in section 11 (b) of this Act, but not necessarily directly or indirectly associated with or relating to the Church.

“<sup>(4)</sup> Such other object or purpose, if not directly or indirectly associated with or relating to the Church, shall be directly or indirectly associated with or relating to the descendants of the original Maori alienors or the members of the whanau, hapu, or iwi that the original alienors represented, or to those with Maori ancestry from time to time residing on or near the land, or both of those groups.

“(5) Such a scheme may provide that section 20 of this Act is no longer to apply to the trustee of the land, and may make other provisions for the selection, appointment, and removal of the trustee of the land.

*New*

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“(5A) No scheme prepared under this section shall have any effect unless and until it is approved by—

“(a) The High Court; or

“(b) The appropriate Synod or (as the case may require) the Aotearoa Council or the New Zealand Advisory Council. 10

“(5B) If a scheme is prepared for the approval of the High Court, the following provisions shall apply:

“(a) The provisions of sections 35 to 37, and Part V of the Charitable Trusts Act 1957 shall apply as if the scheme were prepared pursuant to section 34 of that Act: 15

“(b) If the Court is satisfied that the scheme is one properly authorised by this section, it may approve the scheme notwithstanding anything to the contrary in the Charitable Trusts Act 1957 or any other enactment or in any rule of law or in the trust instrument. 20

“(5C) If a scheme is prepared for the approval of the appropriate Synod or (as the case may require) the Aotearoa Council or the New Zealand Advisory Council, the following provisions shall apply: 25

“(a) The provisions of subsections (2) and (3) of section 12, and sections 13, 14, and 15 (1) of this Act shall apply as if the scheme were prepared pursuant to section 12 (1) of this Act: 30

“(b) In any case to which section 15 (1) of this Act applies, the Chancellor or legal adviser shall, before reporting on the scheme, send to the Attorney-General written notice of the scheme, together with copies of the statement and trust instrument referred to in section 12 (3) of this Act: 35

“(c) In reporting on the scheme the Chancellor or legal adviser shall have regard to any objections that are made by the Attorney-General within 90 days after the receipt of the notice, or, if the Attorney-General within that period notifies the Chancellor or legal 40

*New*

adviser of the need for more time, within such further period not exceeding 90 days as the Attorney-General may specify in the notice:

5 “(d) If the Attorney-General objects on the ground that the scheme is not one that should be approved by the High Court pursuant to **subsection (5B)** of this section, the scheme shall not be approved under this subsection:

10 “(e) Section 16 of this Act shall apply as if for the reference to section 15 (3) of this Act there were substituted a reference to **paragraph (d)** of this subsection.

“**(6)** The trustee of any land to which this section may apply may in its discretion use any part of the trust property held by  
15 it on the same trusts as the land in question, or may charge that land as a contribution in whole or in part to the costs of any inquiry made under **subsection (2)** of this section, including the costs of research or otherwise of the trustee and of any other persons reasonably made a party to the inquiry irrespective of  
20 the outcome of such inquiry, and to the reasonable costs of the preparation, consideration, and approval of the scheme.

“**(7)** Every trust varied in accordance with the preceding provisions of this section shall be deemed to be a charitable trust for all purposes notwithstanding any other enactment or  
25 rule of law to the contrary.”

**4. Private Act**—This Act is hereby declared to be a private Act.