

## CHARITABLE TRUSTS AMENDMENT BILL

### EXPLANATORY NOTE

THE main purpose of this Bill is to give statutory recognition to the charitable nature of certain trusts and institutions which provide recreational or similar facilities, or whose purposes include the provision of such facilities, in the interests of social welfare. Until the case of *Inland Revenue Commissioners v. Baddeley*, [1955] 1 All E.R. 525 H.L., many such trusts and instruments were generally regarded as charitable, but doubts have arisen as to their status since the trust instruments governing them often contain words similar to those which were held too wide in that case. The position has been clarified in the United Kingdom by the Recreational Charities Act 1958. The Law Revision Committee has recommended that legislation on similar lines be enacted in New Zealand, and *clause 3* of this Bill makes provision accordingly.

*Clause 1* relates to the Short Title to the Bill.

*Clause 2* declares that the principal Act, of which the new provisions form part, shall bind the Crown. Section 5 of the Recreational Charities Act 1958 declares that the U.K. Act shall bind the Crown. The opportunity is being taken to make the whole of the Charitable Trusts Act bind the Crown in New Zealand.

*Clause 3* follows substantially the provisions in section 1 and subsections (1) to (3) of section 3 of the U.K. Act. *Subsection (2) (b) (ii)* of the proposed new *section 61A* differs from the corresponding U.K. provision in that it refers to male as well as female members of the public at large. The express reference in the U.K. provision to female members of the public at large was designed to cover the case of women's institutes. Before the decision in *Baddeley's* case these had commonly been regarded as charitable, whereas recreational institutes and clubs confined to men of full age had not been so regarded. The U.K. Act sought to express the law as it was commonly understood to exist before *Baddeley's* case, but in New Zealand it seems preferable to remove the distinction between men and women in this connection.

*Subsection (2) (b) (i)* of the new *section 61A* differs from the corresponding U.K. provision in that it mentions race and occupation as well as the other factors specified. *Subsection (7)* provides for the refund of any tax, charge, or duty that has been paid within six years of the date of the passing of the Bill and is in excess of what would have been payable if the new *section 61A* had been in force.

*Clause 4* transfers to the Charitable Trusts Act the provision now appearing in section 82 of the Trustee Act 1956 which provides that the inclusion of non-charitable and invalid purposes does not invalidate the valid purposes of a trust.

*Hon. Mr Hanan*

## CHARITABLE TRUSTS AMENDMENT

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### ANALYSIS

Title	3. Trusts for recreational and similar purposes
1. Short Title	4. Inclusion of non-charitable and invalid purposes not to invalidate a trust
2. Principal Act to bind the Crown	

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### A BILL INTITULED

#### **An Act to amend the Charitable Trusts Act 1957**

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

1. **Short Title**—This Act may be cited as the Charitable Trusts Amendment Act 1963, and shall be read together with and deemed part of the Charitable Trusts Act 1957 (hereinafter referred to as the principal Act).
- 10 2. **Principal Act to bind the Crown**—The principal Act is hereby amended by inserting, before Part I, the following section:  
“2A. This Act shall bind the Crown.”  
Cf. Recreational Charities Act 1958, s. 5 (U.K.)
- 15 3. **Trusts for recreational and similar purposes**—The principal Act is hereby amended by inserting, after section 61, the following section:

“61A. (1) Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare: 5

“Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

“(2) The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless— 10

“(a) The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and

“(b) Either— 15

“(i) Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or

“(ii) The facilities are to be available to the members of the public at large or to the male or female members of the public at large. 20

“(3) Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women’s institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity. 25 30

“(4) Nothing in this section shall be taken to restrict the purposes which would be regarded as charitable if this section had not been passed.

“(5) Nothing in this section shall— 35

“(a) Apply to make charitable any trust, or validate any disposition, of property if before the twenty-sixth day of June, nineteen hundred and sixty-three, that property or any property representing or forming part of it, or any income arising from any such property, has been paid or conveyed to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust or disposition; or 40

“(b) Affect any order or judgment made or given before the commencement of this section; or

5 “(c) Require anything properly done before that day, or anything done or to be done in pursuance of a contract entered into before that day, to be treated for any purpose as wrongful or ineffectual.

“(6) Except as provided in subsection (7) of this section, nothing in this section shall require anything to be treated for the purposes of any enactment as having been charitable at a time before the date of the commencement of this section, so as to invalidate anything done or any determination given before that date.

10 “(7) Where any tax, charge, or duty under any of the Inland Revenue Acts within the meaning of the Inland Revenue Department Act 1952 has been paid within six years before the date of the commencement of this section and is found to have been paid in error or in excess by virtue of the operation of subsection (1) of this section, the Commissioner of Inland Revenue shall refund the amount thereof or the amount of 20 the excess, as the case may be, to the person entitled to receive it, but no such refund shall be made unless application in writing therefor is received by the Commissioner of Inland Revenue within two years after the date of the commencement of this section; and no refund shall be made of any tax, charge, 25 or duty paid more than six years before the date of the commencement of this section.”

Cf. Recreational Charities Act 1958, ss. 1, 3 (1)–(3)  
(U.K.)

30 **4. Inclusion of non-charitable and invalid purposes not to invalidate a trust**—(1) The principal Act, as amended by section 3 of this Act, is hereby further amended by inserting, after section 61A, the following section:

35 “61B. (1) In this section the term ‘imperfect trust provision’ means any trust under which some non-charitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust property or any part thereof is by the trust directed or allowed; and includes any provision declaring the objects for which property is to be 40 held or applied, and so describing those objects that, consistently with the terms of the provision, the property could be used exclusively for charitable purposes, but could nevertheless (if the law permitted and the property was not used as afore-said) be used for purposes which are non-charitable and 45 invalid.

“(2) No trust shall be held to be invalid by reason that the trust property is to be held or applied in accordance with an imperfect trust provision.

“(3) Every trust under which property is to be held or applied in accordance with an imperfect trust provision shall be construed and given effect to in the same manner in all respects as if— 5

“(a) The trust property could be used exclusively for charitable purposes; and

“(b) No holding or application of the trust property or any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed. 10

“(4) This section shall apply to every trust under which property is to be held or applied in accordance with an imperfect trust provision, whether the trust is declared before or after the commencement of this section: 15

“Provided that this section shall not apply to any trust declared by the will of any testator dying before, or to any other trust declared before, the twenty-sixth day of October, nineteen hundred and thirty-five (being the date of the passing of the Trustee Amendment Act 1935), if before the first day of January, nineteen hundred and fifty-seven (being the date of the commencement of the Trustee Act 1956)— 20

“(a) The trust has been declared to be invalid by any order or judgment made or given in any legal proceedings; or 25

“(b) Property subject to the imperfect trust provision or income therefrom has been paid or conveyed to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust.” 30

(2) Section 82 of the Trustee Act 1956 is hereby consequentially repealed.