

[AS REPORTED FROM THE COMMITTEE ON THE BILL]
House of Representatives, 31 October 1951.

Words inserted are shown in black or in roman with rule down side.

Hon. Mr. McLagan

ELIZA WHITE ORPHANAGE TRUST

[PRIVATE BILL]

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A BILL INTITULED

AN ACT to incorporate the trustees of the will of Eliza White, of Christchurch, widow, deceased, and to vary the trusts of the said will. Title.

5 WHEREAS Eliza White, late of Christchurch, widow, died on the thirteenth day of November, nineteen hundred and nine, having first made her last will and testament bearing date the tenth day of March, nineteen hundred and seven, and one codicil of the same date Preamble.

10 not material to the present situation, which will and codicil were proved in the Supreme Court of New Zealand at Christchurch on the ninth day of December,

nineteen hundred and nine: And whereas the present trustees of the said will and codicil are Maud Magdalean White, of Christchurch, spinster, Beatrice Joseph Bunz, of Christchurch, widow, two of the daughters, and Charles Joseph James Morkane, of Christchurch, medical practitioner, a grandson of the testatrix: And whereas, after bequeathing certain legacies and making certain dispositions of her property, the testatrix devised and bequeathed the residue of her real and personal estate to her trustees upon trust out of income thereof to pay certain annuities, with power to apply the surplus income of her estate in paying off mortgages charged on her real estate or such further mortgages as she empowered her trustees to raise for the purpose of building upon or improving her said real estate, with power for her trustees to sell the whole or any part of her real and personal estate, and by her said will she further directed that her trustees are to stand possessed of the residue of her real and personal estate subject as aforesaid in trust for the purpose of founding, building, equipping, and maintaining two orphanages in or near Christchurch, one for the reception of destitute female orphan children and the other for the reception of destitute male orphan children, the orphanage for female orphan children to be first established and the orphanage for male orphan children not to be undertaken unless or until the Trust estate of the testatrix shall be more than sufficient for the one first to be established, and by the said will she further directed that each such orphanage should be placed under the immediate management of some recognized religious order in the Roman Catholic Church approved of for the purposes by the Roman Catholic Bishop of Christchurch for the time being, and to be called "Saint Joseph's Orphanage," and she further directed that the trustees should associate themselves with the Roman Catholic Bishop for the time being in all matters connected with the admission of children to the orphanage and the general policy of management thereof: And whereas, in pursuance of such directions, the trustees have purchased all that parcel of land containing eleven acres two roods twenty-five perches, situated in the Lincoln Road, of Christchurch, being

Lot 1 on Deposited Plan 9989, Part Rural Section 141, and being the whole of the land comprised and described in certificate of title, Volume 432, folio 90, and have thereon erected and equipped one such orphanage for
5 the reception of female orphans, known as the Eliza White St. Joseph's Orphanage: And whereas, in order the more effectually to facilitate the administration of the trusts of the said will, it is desirable to incorporate the trustees of the said will as a body corporate and
10 to enlarge their numbers and to include the said Bishop for the time being as a member of such body while as far as reasonably possible preserving the representation on that body of the personal descendants of the testatrix and to strengthen it as an administrative body: And
15 whereas to facilitate the administration of the orphanage it is desirable that the same and the control thereof shall be vested in the Roman Catholic Bishop of Christchurch: And whereas the resources of the said estate of the testatrix are such that in the opinion of
20 the trustees it is found impossible to erect and equip a second orphanage for male orphan children, and in the circumstances thereof it is desirable that further powers be conferred on the trustees for the time being or other body administering the trusts of the said will:

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

1. This Act may be cited as the Eliza White Orphanage Trust Act 1951. Short Title.

30 2. The trustees of the said will of the said Eliza White are hereby incorporated under the name of the Eliza White Board of Management (hereinafter referred to as the Board) as a body corporate with perpetual succession and a common seal. Incorporation of Eliza White Board of Management.

35 3. (1) The Board shall comprise five members, who shall be the Roman Catholic Bishop of Christchurch for the time being (hereinafter referred to as the Bishop), the said Maud Magdalean White, Beatrice Joseph Bunz, and Charles Joseph James Morkane, the
40 present trustees of the said will of the said Eliza White, and Maurice Ballantyne Warren, of Christchurch, company director. Members of Board.

Chairman of Board.

(2) The said Maurice Ballantyne Warren shall be the first chairman of the Board, and on his ceasing to hold that office the Board may from time to time appoint one of its members other than the Bishop to be its Chairman.

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Votes of Chairman.

(3) The Chairman of the Board shall have a deliberative vote, and in the case of an equality of votes shall have a casting vote.

Qualification of members.

(4) The Board shall at all times include among its members at least one lineal descendant of the said Eliza White if such there be willing to accept office and acceptable to a majority (which must include the Bishop) of the remaining members of the Board. Moreover, the Board shall at all times include among its members at least one person who has not been baptized as a member of the Roman Catholic Church. If at any time such last mentioned person shall be received into and shall become a member of the said Church or in the event of there having been more than one such non-Catholic person on the Board, then upon the last of such non-Catholic persons being received into and becoming a member of the said Church a vacancy on the Board shall thereupon occur, which shall be filled in manner next hereinafter provided.

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Vacancies on Board.

(5) On a vacancy occurring on the Board by a member (other than the Bishop) dying or remaining out of New Zealand for the space of twelve months or desiring to be discharged from office or refusing to act or becoming unfit or incapable of acting or otherwise howsoever occurring the same shall be filled by appointment made by a majority (which must include the Bishop) of the surviving or remaining members.

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Removal from office.

(6) Any member of the Board other than the Bishop, the said Maud Magdalean White, Beatrice Joseph Bunz, and Charles Joseph James Morkane may at any time be removed from office by a majority (which must include the Bishop) of the remaining members of the Board, and the vacancy so created shall be filled in the same manner as if such member had resigned his office.

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(7) Each of them the said Maud Magdalean White, Beatrice Joseph Bunz, and Charles Joseph James Mor-
kane shall, so long as he or she shall remain a member of
the Board, receive out of the income of the estate of
the said Eliza White deceased the annual sum of seventy
pounds, which in the case of each of them the said
Maud Magdalean White and Beatrice Joseph Bunz shall
be deemed to include the annual sum of twenty pounds
bequeathed to her by the said will.

Remuneration
to certain
members of the
Board.

4. (1) The trustees of the said will shall forthwith
convey, transfer, and assign to the Bishop the said
lands above described, with the said orphanage and all
other improvements thereon and all chattels thereon
or used in connection therewith, to be held by the Bishop
upon the trusts and with the powers in the said will
set forth as hereby modified save in so far as such
trusts and powers are hereafter vested in the Board.

Orphanage to
be vested in
Bishop.

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(2) For the purposes of this Act the Bishop is hereby
constituted a corporation sole with perpetual succession.

5. The trustees of the said will shall forthwith and
from time to time convey, transfer, assign, and pay over
unto the Board all real and personal property subject
to the trusts of the will of the said Eliza White other
than the lands, improvements, and chattels referred to
in section four of this Act.

Other trust
assets to be
vested in
Board.

6. (a) Subject to the powers contained in the said
will to apply income towards paying off mortgages or
for that purpose to make accumulations of income, the
Board shall pay the net income from such real and
personal property so vested in the Board to the Bishop
to be applied for the purposes of the said orphanage
as provided in the said will.

Application of
income.

(b) Subject as aforesaid thereto, the Board shall
hold all real and personal property vested in it pursuant
to section five of this Act upon the trusts and with the
powers in the said will set forth as hereby modified,
and save in so far as such trusts and powers are herein
vested in the Bishop.

Application of
capital.

7. If at any time the Bishop shall be unable to
administer and carry on the said orphanage in
accordance with the trusts of the will as hereby modified,
then the Bishop shall forthwith transfer and assign the
said orphanage premises and the chattels thereon and
used in connection therewith to the Board to be held
by the Board on the trusts of the will declared and
contained as hereby modified or as near thereto as
circumstances and the law permit:

On failure of
orphanage,
Bishop to trans-
fer orphanage
premises to
Board.

Provided that in such case the Board shall not be liable for any debts incurred by the Bishop without the authority of the Board save to the extent of income in the hands of the Board at the time of such transfer to it which would have otherwise been paid to the Bishop. 5

Orphanage available for children of both sexes.

8. The said orphanage may at the discretion of the Bishop be used for the reception of both female orphan children and male orphan children.

Will as herein amended to remain in force.

9. Nothing in this Act contained shall prejudice or affect the provisions of the said will or anything therein contained except so far as the same are expressly altered or modified by or are inconsistent with this Act, the intention of this Act being that, except to such extent as aforesaid, the said will shall remain in full force and effect. 10

Release to trustees on transfer of assets of estate.

10. Simultaneously with the conveyance, transfer, assignment, and payment to the Bishop and the Board respectively of the real and personal property subject to the trusts of the said will referred to in sections *four* and *five* hereof, the Board and the Bishop shall upon being respectively satisfied in that behalf execute such deeds as the trustees of the will may reasonably require releasing and discharging the said trustees from the duties imposed on them by the said will in connection with such real and personal property, lands, and chattels, such deeds to be prepared by the solicitors to the trustees at the cost of the Board. 15

Costs of promoting this Act to be paid out of estate.

11. All costs, charges, disbursements, and expenses of and incidental to the preparing for obtaining and passing of this Act shall be charged against and paid out of the assets of the estate of the said Eliza White. 20

Private Act.

12. This Act is hereby declared to be a private Act. 25