

KIRKPATRICK MASONIC TRUST EMPOWERING BILL

AS REPORTED FROM THE EDUCATION AND SCIENCE COMMITTEE

COMMENTARY

Recommendation

The Education and Science Committee has examined the Kirkpatrick Masonic Trust Empowering Bill and:

- (a) Recommends that the bill be passed with the amendments shown in the bill;
and
- (b) The Kirkpatrick Masonic Trust Empowering Bill is a private bill. The committee reports that the statements in the Preamble have been proven to its satisfaction.

Conduct of the examination

The Kirkpatrick Masonic Trust Empowering Bill was introduced to the House on 4 November 1997. It had its second reading on 12 November 1997 when it was referred to the Education and Science Committee.

The committee advertised for submissions in the *Nelson Evening Mail*, the *Marlborough Express*, the *New Zealand Education Review* and the *New Zealand Education Gazette*. Submissions were invited from the Board of Governors of Kirkpatrick House, the Public Trustee and the Grand Lodge of New Zealand Freemasons. Submissions were received from the Public Trustee and the Counsel for the Board of Governors of Kirkpatrick House.

The committee heard evidence in private from the Counsel for the Board of Governors of Kirkpatrick House and received advice from Parliamentary Counsel on 19 March 1998.

This commentary set out the details of the committee's consideration of the bill and the major issues addressed by the committee.

Purpose of the Bill

Essentially, the bill seeks to extend the powers of the trust to help pay for the education of females in positions of need who are nominated by Masonic bodies. It will widen the purposes of the trust to assist with the education and

accommodation of female children in need. It will confer powers to sell or lease Kirkpatrick House and to sell or dispose of its furniture and effects. Power will be conferred to acquire or erect alternative accommodation.

Background

Samuel Kirkpatrick was a Nelson manufacturer who died in 1925. In his will he left his family residence and the chattels in it for a Board of Governors to run as a Masonic institution or boarding establishment, supported by income from his residuary estate. The purpose was to provide a boarding establishment for the female orphans of Freemasons "of good standing in their respective lodges". The estate was also to assist in the education of the girls being accommodated if sufficient funds were available. The institution envisaged by Samuel Kirkpatrick opened in 1926 and became known as Kirkpatrick House. The Public Trustee is the trustee of the estate and the legal owner of Kirkpatrick House.

Kirkpatrick House is currently subject to two Acts of Parliament. The Kirkpatrick Masonic Institute Empowering Act 1930 added to the provisions of Samuel Kirkpatrick's will by enabling the board to accept and use gifts for the purposes of Kirkpatrick House and to distribute money to orphans for certain purposes.

The 1930 Act was amended by the Kirkpatrick Masonic Institute Empowering Amendment Act 1983 to widen the board's scope in providing assistance. While preference was still to be given to those who qualified under Samuel Kirkpatrick's will, it was no longer an essential qualification for assistance that a female child be the daughter of a deceased Freemason, or even an orphan.

Current position

It has become uneconomic and inappropriate to manage Kirkpatrick House as a boarding establishment. It is a large rambling house with high maintenance costs. It is now more practical for the young women being assisted to be boarders at Nelson College for Girls.

Eight girls are currently being assisted by the board. They come from throughout New Zealand, and one from Western Samoa. The flexibility proposed in this bill will enable even greater assistance to be provided in future.

Proposed new position

While the Public Trustee is currently relying on the power under the Trustee Act 1956 to let or lease out property, the board considers it desirable to make the power explicit in relation to Kirkpatrick House.

The board also believes that the Public Trustee should have the power to sell Kirkpatrick House and its grounds, in whole or part, if that seems desirable in terms of freeing up capital for other income-generating investments or for the acquisition or erection of more suitable accommodation.

The board also believes that a further widening of its scope to give assistance will provide greater public benefit. It is proposed, therefore, that the education of eligible females become as important a purpose as providing accommodation and that assistance be given from pre-primary through to tertiary education levels. A link with the original will remains in that children of deceased Freemasons must still be given preference.

Need for the bill

The essential reason why the matters in this bill cannot be dealt with in a court using the provisions of the Charitable Trusts Act 1957 arise from the legislative history of the trust. The powers granted the Public Trustee and the board in the

will of Samuel Kirkpatrick have been overlain with legislative variations in the 1930 and 1983 Acts. These can only be changed through further legislation.

Clauses of the bill

The clauses proposed in this bill provide for the proposed new position outlined above. Since the bill's second reading, however, the board's Counsel has reflected further on the wording of clause 3 and believe it would benefit from some refining. We have accepted, therefore, a proposed amendment to clause 3.

Amendment to clause 3

Clause 3, as amended, extends the scope of the trusts under which the board operates and is the bill's central provision.

The amendments are desirable for the following reasons:

- The original opening words in subclause (1) paragraphs (a) and (b) ("Assisting in paying for" and "Providing accommodation, assisting in paying for") seem superfluous.
- The new paragraph (c) will put beyond doubt that the board can continue to provide assistance of an ancillary nature to females to whom it is giving assistance for education or accommodation. Such ancillary assistance could include medical attention, sporting, recreational or cultural activities, travel to and from Nelson, excellence awards, and pocket money.
- The new subclause (3) is needed to make it clear that clause 3 is a complete statement of how the board can apply income from the residuary estate.

Amendment to clause 10

Since the bill's second reading, the board's Counsel has also suggested a proposed amendment to clause 10 that we have accepted. It will address an impediment to the board accepting bequests. This has arisen out of a recent bequest from an estate that was made to the Kirkpatrick Masonic Home rather than the board.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act.)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Nick Smith

KIRKPATRICK MASONIC TRUST EMPOWERING

[PRIVATE]

ANALYSIS

Title	10. Acceptance of gifts, grants, and subsidies etc
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5. Retention of Kirkpatrick House pending sale	
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9. Power to let or lease	

SCHEDULE

Paragraph 7 of the Will of Samuel Kirkpatrick

A BILL INTITULED

An Act to—

- 5
- (a) Widen the purposes for which the residuary estate of the late Samuel Kirkpatrick may be applied towards assisting with the education and accommodation of female children who are in need; and
- 10
- (b) Confer powers to sell, lease, or let Kirkpatrick House, and to sell or dispose of its furniture and effects; and
- 15
- (c) Require the proceeds of any sale of Kirkpatrick House and the proceeds of any sale of the furniture and effects to form part of the residuary estate of the late Samuel Kirkpatrick; and
- (d) Confer power to acquire or erect alternative accommodation for the wider purposes to which the residuary estate may be applied; and
- 20
- (e) Consolidate and amend legislation relating to the Kirkpatrick Masonic Institute

WHEREAS—

- A. Samuel Kirkpatrick (“the testator”) of Nelson, manufacturer, died on 21 May 1925:
- B. The Public Trustee is the trustee under the testator’s will:
- C. Under his will (paragraph 7 of which is set out in the Schedule of this Act), the testator— 5
- (a) Gave his family residence at Nelson and the furniture and other effects in it so as to permit a Board of Governors (the “Board”) to manage it as a Masonic institution or boarding establishment primarily for the boarding and maintenance and (if his residuary estate was sufficient and the Board thought it expedient) education of female orphans of certain Freemasons; and 10
- (b) Provided for the income from his residuary estate to be applied by the Board for the purposes of carrying on the institution: 15
- D. The institution was opened on 4 April 1926 and became known as the Kirkpatrick Masonic Institute, but is now known as Kirkpatrick House: 20
- E. The Kirkpatrick Masonic Institute Empowering Act 1930 enabled the Board to accept and use gifts for the purposes of the Institute, and to distribute money to the orphans for certain purposes:
- F. The Kirkpatrick Masonic Institute Empowering Amendment Act 1983 enabled the Board, among other things, to— 25
- (a) Provide for the boarding and maintenance at Kirkpatrick House of the daughters of Freemasons of good standing in their Lodges or of any other female children nominated for admission by a Lodge or other Masonic body, who are in a position of need because of the death, illness, or misfortune of either or both parents; and 30
- (b) If the residuary estate is sufficient and the Board thinks it expedient, pay for the education of any of those children while resident in Kirkpatrick House and pay for their further education and advancement in life after leaving Kirkpatrick House,— 35
- but with preference being given to female children who qualify under paragraph 7 of the testator’s will: 40
- G. The Board has advised the Public Trustee that because it has become uneconomic and inappropriate to manage Kirkpatrick House for the original purposes, the Public Trustee should have the power to sell, lease, or let 45

Kirkpatrick House and apply the proceeds to the wider purposes specified in paragraph H. The Board has also advised the Public Trustee that the Public Trustee should have the power to acquire or erect alternative accommodation:

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H. The Board has also advised the Public Trustee that the trusts created by the will (as extended and varied by legislation) would be of greater public benefit if they were widened to permit the Board to use the income from the residuary estate to—

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(a) Assist in paying for the education, at any level, of any female children who have been nominated by a Lodge or other Masonic body and who are in need because of the death, illness, or misfortune of either or both parents; and

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(b) Provide accommodation for, or assist in paying for the accommodation of, those female children while they are being educated (whether or not they are receiving assistance from the Board with the cost of their education),—

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but with preference being given to children of deceased Freemasons:

I. The Public Trustee agrees that it is desirable to widen the trusts in the manner proposed by the Board:

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J. The objects of this Act can be attained only by legislation:

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

1. Short Title—This Act may be cited as the Kirkpatrick Masonic Trust Empowering Act 1997.

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

“Board” means the Board of Governors established under the will of the testator, and incorporated under the Charitable Trusts Act 1957 on 15 August 1974 as The Board of Governors of Kirkpatrick House:

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“Education” means education at any of the following levels:

(a) Pre-primary:

(b) Primary:

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(c) Secondary:

(d) Tertiary;—

and “being educated” has a corresponding meaning:

“Kirkpatrick House”—

(a) Means the piece of land containing 1.0140 hectares, more or less, being part of section 677 City of Nelson and part lot 2 deposited plan 79, and being all the land comprised and described in certificate of title 4A/335 (Nelson Land Registry); and 5

(b) In relation to **sections 4 (1) and 9**, includes part of that land:

“Public Trustee” means the Public Trustee constituted under the Public Trust Office Act 1957: 10

“Residuary estate”—

(a) Means the estate of the testator held by the Public Trustee on the trusts as set out in paragraph 8 of the will of the testator and extended by this Act; and 15

(b) Includes—

(i) Any income derived from that estate:

(ii) The proceeds of any sale under **section 4 or section 6**:

“Testator” means Samuel Kirkpatrick, late of Nelson, manufacturer. 20

3. Scope of trusts extended—

Struck Out (Unanimous)

(1) The Board may apply the income from the residuary estate to either or both of the following purposes: 25

(a) Assisting in paying for the education of any female—

(i) Who has been nominated by a Lodge or other Masonic body; and

(ii) Who is in a position of need because of the death, illness, or misfortune of either or both of her parents: 30

(b) Providing accommodation for, or assisting in paying for the accommodation of, any female who is being educated and who qualifies for assistance under **paragraph (a)** (whether or not she is receiving assistance under that paragraph). 35

New (Unanimous)

(1) The Board may apply the income from the residuary estate to one or more of the following purposes:

- 5 (a) The education of any female—
 - (i) Who has been nominated by a Lodge or other Masonic body; and
 - 10 (ii) Who is in a position of need because of the death, illness, or misfortune of either or both of her parents:
- (b) The accommodation of any female who is being educated and who qualifies for assistance under **paragraph (a)** (whether or not she is receiving assistance under that paragraph):
- 15 (c) The maintenance, advancement, or benefit of any female who is receiving assistance under **paragraph (a)** or **paragraph (b)**.

(2) In deciding who to assist under **subsection (1)**, the Board must give preference to the child of a deceased Freemason.

New (Unanimous)

(3) This section applies (in respect of applications of income from the residuary estate) in place of paragraph 8 of the testator's will.

25 **4. Sale of Kirkpatrick House**—(1) The Public Trustee may sell Kirkpatrick House.

(2) The Public Trustee must not sell Kirkpatrick House unless the Public Trustee has, before entering into an agreement to sell, consulted the Board about the proposed sale, but failure to consult does not affect the validity of the sale.

30 **5. Retention of Kirkpatrick House pending sale**—Pending the sale (if any) of Kirkpatrick House, the Board may manage Kirkpatrick House for, or apply any income from Kirkpatrick House to, *(either or both)* one or more of the purposes stated in **section 3 (1)**.

35 **6. Disposal of furniture and effects**—The Board may from time to time, in such manner as the Board thinks fit,—

(a) Sell; or

(b) Dispose of by way of gift or loan,—
any of the furniture and effects of Kirkpatrick House.

7. Alternative accommodation—(1) The Public Trustee may apply the residuary estate to acquire land or erect a building, or both, for *(either or both)* one or more of the purposes stated in **section 3 (1)**. 5

(2) The Board may manage the land or building for, or apply any income from the land or building to, *(either or both)* one or more of the purposes stated in **section 3 (1)**. 10

8. Powers of investment—Pending the application of money in the residuary estate to the purposes authorised by **section 3 (1)**, the Public Trustee must invest any money in the residuary estate in accordance with the Trustee Act 1956.

9. Power to let or lease—The Public Trustee may exercise the powers relating to letting and leasing in section 14 of the Trustee Act 1956 in respect of— 15

(a) Kirkpatrick House; or

(b) Any land acquired or building erected under **section 7**.

10. Acceptance of gifts, grants, and subsidies etc— 20
(1) The Board may accept any devise, bequest, gift, or grant of real or personal property and apply it to *(either or both)* one or more of the purposes stated in **section 3 (1)**.

New (Unanimous)

(1A) **Subsection (1)** includes any devise, bequest, gift, or grant of real or personal property to Kirkpatrick House or for any purpose in connection with Kirkpatrick House, if the donor or the donor's personal representative in his or her absolute discretion agrees, or if the High Court orders. 25

(2) The Board may apply for and receive grants and subsidies for any female child it is assisting or proposes to assist and, for that purpose, may— 30

(a) Enter into an agreement or execute a document; or

(b) Require a parent or guardian of the child to contribute towards that assistance. 35

11. Recognition of Board as incorporated body—

(1) The Board is, and since its incorporation under the Charitable Trusts Act 1957 has been, the same Board as the Board of Governors established under the will of the testator.

5 (2) **Subsection (1)** ceases to apply if the Board, as incorporated, is put into liquidation.

12. Repeals—The following enactments are repealed:

(a) The Kirkpatrick Masonic Institute Empowering Act 1930:

10 (b) The Kirkpatrick Masonic Institute Empowering Amendment Act 1983.

13. Validation of Board's past actions—Actions of the Board before the commencement of this Act that would have been valid if this Act had been in force are to be treated as having always been valid.

15 **14. Costs of promoting Act—**The costs, charges, disbursements, and expenses of preparing, promoting, and passing this Act must be paid by the Public Trustee out of the capital of the residuary estate.

15. Private Act—This Act is a private Act.

Preamble, recital C

SCHEDULE

PARAGRAPH 7 OF THE WILL OF SAMUEL KIRKPATRICK

7. I give devise and bequeath free of estate and succession duty all that piece of land situate at Mount Street, Nelson, being the Sections numbered 670-674 and 676 Nelson District containing 3 acres 3 roods 23 perches more or less together with the buildings and erections thereon and all my plate linen china glass books prints pictures furniture and other household effects therein not hereinbefore otherwise disposed of to permit and allow the Board of Governors as hereinafter constituted to use manage and carry on the same as a Masonic Institution or Boarding Establishment primarily for the boarding and maintenance and also (should the income and capital from my residuary estate permit and the Board considers it expedient) the education of the orphan daughters of deceased Freemasons who in the opinion of the said Board shall have been of good standing in their respective Lodges And I declare that for the purposes of this my Will the word "orphan" shall mean a female child whose father has died And I further declare that the orphan daughters of deceased Freemasons of either the English, Irish, Scotch or New Zealand Constitutions shall be eligible for admission to such Institution on the conditions and between the ages from time to time fixed by the Board And I further declare that no part of the said furniture pictures chattels and effects shall be sold exchanged or otherwise disposed of but that they shall so far as possible be kept in the rooms where the children may see them and not in the private rooms of the attendants or manager.