

Hon. Dr Michael Cullen

OTAGO FOUNDATION TRUST BOARD

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to consolidate and amend the Otago Foundation Trust Board Act 1962 and its amendments

WHEREAS the Otago Foundation Trust Board is presently incorporated under the provisions of the Otago Foundation Trust Board Act 1962 to which there have been 2 amendments: And whereas the law in New Zealand relating to trustees and their powers has developed and changed as has the general law and commercial practice and ecclesiastical needs: And whereas it is now desired to consolidate those amendments and to make further provisions in accordance with those developments and changes to enable the better administration of the funds of the said Board: And whereas it is desired to state more adequately the roles and functions of the said Board and the Presbyterian Synod of Otago and Southland:

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

1. Short Title—This Act may be cited as the Otago Foundation Trust Board Act 1992.

Preliminary 20

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

“Board” means the Otago Foundation Trust Board continued in existence under **section 3** of this Act:

“College” means any institution already or hereafter established either for the encouragement of learning (but not confined to any one branch of learning) or for the assistance of persons engaged in the pursuit of learning or partly for each of such objects:

“College fund” means the net funds, including the present College endowment property (described as being Lots 1 to 11 on Deposited Plan 5413 and being also all of the land comprised and described in certificates of title Volume 308, folios 88, 89, and 90, Otago Land Registry), and such other assets identified in the books of account of the Board as such as at the 31st day of December 1990, together with any future increase and subject to any future decrease therein:

“College site fund” means the net funds, including the present Knox College site (described as being part section 4, North East Valley District, and being also

the balance of the land comprised and described in certificate of title Volume 278, folio 204, Otago Land Registry), and such other assets identified in the books of account of the Board as such as at the 31st day of December 1990, together with any future increase and subject to any future decrease therein:

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“Congregation” means any congregation or body of Christians within the Provincial District of Otago already or hereafter to be sanctioned by, or which is or may be under the jurisdiction or control of, Synod:

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“Deacons’ Court” means the persons, whether incorporated or not, acting in the management of the temporal affairs of any congregation and appointed according to the laws and usages of the Presbyterian Church of New Zealand; and includes the Board of Managers or Parish Council (within the meaning of that term as used in the Book of Order of the Presbyterian Church of New Zealand) of any congregation:

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“Ecclesiastical fund” means the funds designated as such in the books of account of the Board as at the 31st day of December 1990, which includes such of the properties listed in Schedule A to the Otago Foundation Trust Board Act 1962 as are owned by the Board on the commencement of this Act, together with two-thirds of the net funds of the previous joint funds of the Ecclesiastical and Educational Funds as at that date, and together with any future increase and subject to any future decrease therein:

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“Educational fund” means the funds designated as such in the books of account of the Board as at the 31st day of December 1990, which includes such of the properties listed in Schedule A to the Otago Foundation Trust Board Act 1962 as are owned by the Board on the commencement of this Act, together with one-third of the net funds of the previous joint funds of the Ecclesiastical and Educational Funds as at that date, and together with any future increase and subject to any future decrease therein:

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“Factor” means the chief executive officer of the Board appointed pursuant to **section 16** of this Act:

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“First Church fund” means the net funds, including the present First Church site (described as being part

- Reserve No. 4, Town of Dunedin, and being also all of the land comprised and described in certificate of title Volume B2, folio 251, Otago Land Registry), and such other assets identified in the books of account of the Board as such as at the 31st day of December 1990, together with any future increase and subject to any future decrease therein: 5
- “Land and buildings” means—
- (a) Land; and
 - (b) Fixtures to land— 10
- and includes such other property appurtenant to land and buildings and their use as may from time to time be determined to come within the definition by Synod regulations:
- “Literary chair” includes any class in which instruction is given to students in any branch of learning, including (but not by way of limitation) literature, science, art, history, mathematics, languages, and the various branches of each: 15
- “Manse fund” means the net funds comprising the previous Church and Manse Fund and identified in the books of account of the Board as such as at the 31st day of December 1990, which includes such of the properties listed in Schedule C to the Otago Foundation Trust Board Act 1962 as are owned by the Board on the commencement of this Act, other than the present First Church site (described as being part Reserve No. 4, Town of Dunedin, and being also all of the land comprised and described in certificate of title Volume B2, folio 251, Otago Land Registry), together with any future increase and subject to any future decrease therein: 20 25 30
- “Mission and evangelism ministry” means the employment of people and deployment of resources at Synod, Presbytery, and Parish level in the field of Christian education, youth work, evangelism, and outreach with emphasis towards persons who are unchurched or underprivileged: 35
- “Provincial District of Otago” means that portion of New Zealand which was included in the Province of Otago immediately before the Abolition of Provinces Act 1875 came into effect; and includes that geographical area frequently referred to as Southland; and also includes all congregations under the jurisdiction and control of Synod: 40 45

“Synod” means the Synod existing in connection with that part of the Presbyterian Church of New Zealand situated in the Provincial District of Otago and referred to in the Presbyterian Church of New Zealand Act 1901:

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“The Presbyterian Church of New Zealand” means the United Church referred to in the Presbyterian Church of New Zealand Act 1901:

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“Trustees” means the trustees for the time being holding office as such under this Act; and “trustee” means any one of those trustees.

Otago Foundation Trust Board

3. Otago Foundation Trust Board—(1) There shall continue to be a Board to be called the Otago Foundation Trust Board, which shall be the same Board as that constituted by section 5 of the Otago Foundation Trust Board Act 1962.

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(2) The Board shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

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4. Members of Board—(1) The Board shall comprise not less than 5 nor more than 7 trustees for the time being holding office as such under this Act.

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(2) The trustees holding office as such under the Otago Foundation Trust Board 1962 immediately before the commencement of this section shall, on the commencement of this section, be deemed to have been appointed as trustees under this Act.

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5. Vacancies on Board—A trustee shall vacate office as such if he or she—

(a) Dies; or

(b) Resigns his or her office by written notice to the presiding member of the Board or to any other trustee; or

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(c) Goes to reside outside the Provincial District of Otago for more than 6 months; or

(d) Ceases to be a member of the Presbyterian Church of New Zealand for any reason or is suspended from membership of that Church; or

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(e) Refuses to act as a trustee or becomes incapable of so acting for any reason; or

(f) Is adjudged bankrupt; or

- (g) Is convicted of any crime; or
- (h) Becomes a committed patient as defined in section 2 of the **Mental Health Act 1969**; or
- (i) Becomes a person in respect of whom an order is made pursuant to the Protection of Personal and Property Rights Act 1988. 5

6. Filling of vacancies—On the vacation of office by any trustee the Board shall as soon as practicable, at a meeting called for the purpose, appoint a fit and proper person as a trustee to fill the vacancy: 10

Provided that if the vacancy does not result in the number of trustees falling below 5, the Board may determine not to fill the vacancy.

7. Evidence of appointment of new trustee—The appointment of a new trustee shall be entered in the Board's minute book in **form 1** in the Schedule to this Act, and such entry shall be sufficient evidence, in the absence of proof to the contrary, that the new trustee has been properly appointed. 15

8. Notification of appointment—As soon as practicable after the appointment of a new trustee the Board shall cause to be delivered to the Clerk of Synod a copy of the minute referred to in **section 7** of this Act certified correct by the presiding member of the Board or the Factor. 20

Meetings of Board

9. Presiding member of Board—(1) The trustees shall from time to time appoint one of their number to be the presiding member of the Board. 25

(2) The presiding member shall hold office as such for the term for which he or she is appointed, and may be reappointed as presiding member. 30

(3) If no term of office is specified the presiding member shall hold office as such during the pleasure of the Board.

10. Meetings of Board—(1) Meetings of the Board shall be held at such times and places as the Board from time to time appoints. 35

(2) Notwithstanding **subsection (1)** of this section, the presiding member or any 2 trustees may call a meeting of the Board.

(3) Not less than 3 days' written notice of a proposed meeting of the Board shall be given by the Factor, or other person or persons calling the meeting, to each trustee. 40

(4) At all meetings of the Board the quorum shall be 3 trustees, but if the number of trustees falls below 3 the continuing trustee or trustees may act for the purpose of increasing the number of trustees to 3 but for no other purpose.

5 (5) The presiding member shall preside at all meetings of the Board at which the presiding member is present.

(6) If the presiding member is absent from a meeting of the Board, the trustees present shall appoint one of their number to preside.

10 (7) All questions arising at any meeting of the Board shall be decided by a majority of the votes of the trustees present who are entitled to vote and do vote, and, if there is an equality of votes, the presiding member or other person presiding at the meeting shall have a casting vote.

15 (8) Subject to this Act, the Board may regulate its own procedure.

11. Minutes of meetings—(1) Proper minutes of the proceedings of each meeting of the Board shall be kept in a minute book.

20 (2) All such minutes purporting to be certified and signed as correct by the person who presided at any meeting of the Board shall be sufficient evidence of the matters stated in the minutes in the absence of proof to the contrary.

Functions and Powers of Board

25 **12. Common seal**—(1) The form of the Board's common seal shall be such as is determined from time to time by the Board.

(2) The affixing of the Board's common seal shall be attested by at least 3 trustees.

30 **13. Contracts of Board**—(1) Any contract that, if made between private persons, must be by deed shall, if made by the Board, be in writing under the common seal of the Board.

35 (2) Any contract that, if made between private persons, must be in writing signed by the persons to be charged therewith shall, if made by the Board, be in writing either under the common seal of the Board or signed by any person acting on behalf of and under the express or implied authority of the Board.

40 (3) Any contract that, if made between private persons, may be made orally may, if made by the Board, be made in the manner specified in subsection (1) of this section, or in the manner specified in subsection (2) of this section, or orally by any

person acting on behalf of and under the express or implied authority of the Board.

14. Purpose and functions of Board—(1) The purpose and functions of the Board shall be—

(a) To administer the various funds referred to in this Act upon, for, and subject to the trusts and purposes under and for which they were established: 5

(b) To acquire and hold in its name land and buildings upon trust for any congregation or Deacons' Court for the purpose or other benefit of a church or manse or church hall or glebe, and to administer the trusts under which such land and buildings are held. 10

(2) The Board shall faithfully carry out its purpose and functions under **subsection (1)** of this section—

(a) Within the context of a widely religious or educational sense and taking due account of present and future developments in Presbyterian education, worship, theology, and mission, and secular education, within the Provincial District of Otago; and 15

(b) Beyond that Provincial District and beyond the literal bounds of the Presbyterian religion if the object served is a charitable purpose within the meaning of the Charitable Trusts Act 1957. 20

15. Powers of Board—(1) Subject to this Act, the Board shall have all the powers of a natural person. 25

(2) Except as otherwise provided in this Act or in the instrument constituting any trust to which this Act applies, the powers and duties of the Board in respect of every such trust shall be the same as those for the time being conferred and imposed on trustees in accordance with the general law in New Zealand relating to trustees. 30

(3) The Board may accept appointment and act as trustee, on its own or together with any other body or person, in respect of any trust if neither the objects of the trust nor its administration are likely, in the Board's opinion, to be repugnant to its functions or a deterrent to the proper carrying out of those functions. 35

16. Factor and other employees—(1) The Board may from time to time appoint a Factor to be the chief executive officer of the Board, and such other employees as it considers necessary for the efficient carrying out of its purpose and functions. 40

(2) The Factor and other employees of the Board shall be employed on such terms and conditions of employment as the Board from time to time determines.

Ecclesiastical Fund

5 **17. Ecclesiastical fund**—(1) The ecclesiastical fund shall be administered by the Board.

(2) The net annual income of the ecclesiastical fund shall each year be applied by the Board—

10 (a) Firstly, in accordance with the directions of Synod issued in accordance with **section 25** of this Act, for the purposes of—

15 (i) Acquiring, constructing, repairing, or maintaining any land or buildings in the Provincial District of Otago for churches, manses, church halls, or other buildings to be used for or in connection with religious purposes; or

 (ii) Repaying any money borrowed at any time for such purposes; or

20 (iii) Endowing or assisting in the endowment of any theological chair or theological lectureship, in connection with the Presbyterian Church of New Zealand, in any college or university in the Provincial District of Otago, or paying salaries and other emoluments to the incumbent of any such chair or lectureship; or

25 (iv) For any other purpose consistent with those purposes as determined from time to time by Synod in accordance with the said directions:

30 (b) Secondly, in accordance with the directions of Synod issued in accordance with **section 25** of this Act, for the purpose of mission and evangelism ministry.

35 (3) The maximum proportion of such income applied in each year by the Board for the purposes specified in **subsection (1) (b)** of this section shall be 25 percent of the available income or such other proportion as may be specified by regulations in force under **section 23** of this Act.

(4) Any income not expended in any year in accordance with this section shall be carried forward and be available for expenditure in the following year.

40 (5) Notwithstanding **subsection (4)** of this section, Synod may from time to time direct, in accordance with **section 25** of this Act, that all or any specified part of such unexpended income be added to the capital of the ecclesiastical fund; and the Board shall capitalise that part in accordance with the direction.

Educational Fund

18. Educational fund—(1) The educational fund shall be administered by the Board.

(2) The net annual income of the educational fund shall each year be applied by the Board, in accordance with the directions of Synod issued in accordance with **section 25** of this Act, for the purposes of— 5

- (a) Assisting any school, college, or other educational institution in the Provincial District of Otago; or
- (b) Endowing or assisting in the endowment of any literary chair or literary lectureship in any college or university in the Provincial District of Otago, or paying salaries and other emoluments to the incumbent of any such chair or lectureship; or 10
- (c) Meeting or contributing towards the cost of any land and buildings used or to be used by any college or university in the Provincial District of Otago, so long as the college or university has as part of its objects the provision of suitable residential accommodation for students of all denominations and of all faculties to reside under Christian influence and discipline; or 15 20
- (d) Promoting secular and religious education in the Provincial District of Otago to the end that the community as well as the church will receive the greatest possible benefit; or 25
- (e) For any other purpose consistent with those purposes as determined from time to time by Synod in accordance with **section 25** of this Act.

(3) Any income not expended in any year in accordance with this section shall be carried forward and be available for expenditure in the following year. 30

(4) Notwithstanding **subsection (3)** of this section, Synod may from time to time direct, in accordance with **section 25** of this Act, that all or any specified part of such unexpended income be added to the capital of the educational fund; and the Board shall capitalise that part in accordance with the direction. 35

First Church Fund

19. First Church fund—(1) The First Church Fund shall be administered by the Board.

(2) The capital and net income of the First Church fund shall continue to be held by the Board upon trust for the provision of a site for the first or principal church, and for the maintenance of the land and buildings thereof, in connection with that part 40

of the Presbyterian Church of New Zealand which is situated in the Provincial District of Otago.

5 (3) The Board shall not exercise any power of sale in respect of any land or buildings held in the First Church fund without the consent of Synod and the consent of the Deacons' Court of First Church, both of which consents shall be evidenced by a certificate issued by the Moderator or the Clerk of Synod for the time being or some other person authorised in that behalf by Synod.

10 (4) Unless the Board at any time otherwise determines, the net annual income of the First Church fund shall each year be added to the capital of that fund.

Manse Fund

15 **20. Manse fund**—(1) The manse fund shall be administered by the Board.

(2) The net annual income of the manse fund shall each year be applied by the Board, in accordance with the directions of Synod issued in accordance with **section 25** of this Act, for the purposes of—

20 (a) Acquiring, constructing, repairing, or maintaining any land and buildings used or to be used for manses, churches, church halls, or for or in connection with religious purposes in the Provincial District of Otago; or

25 (b) Repaying any money borrowed at any time for such purposes; or

(c) For any other purpose consistent with those purposes as determined from time to time by Synod in accordance with **section 25** of this Act.

30 (3) Any income not expended in any year in accordance with this section shall be carried forward and be available for expenditure in the following year.

35 (4) Notwithstanding **subsection (3)** of this section, Synod may from time to time direct, in accordance with **section 25** of this Act, that all or any specified part of such unexpended income be added to the capital of the manse fund; and the Board shall capitalise that part in accordance with the direction.

College Site Fund

40 **21. College site fund**—(1) The college site fund shall be administered by the Board.

(2) The capital and net income of the college site fund shall continue to be held by the Board upon trust for the provision of a site for the purpose of acquiring, constructing, repairing, or

maintaining land and buildings for either a college or an associated hall of residence, or both.

(3) The Board shall not exercise any power of sale in respect of any land or buildings held in the college site fund without the consent of Synod, which consent shall be evidenced by a certificate issued by the Moderator or the Clerk of Synod for the time being or some other person authorised in that behalf by Synod. 5

(4) Unless the Board at any time otherwise determines, the net annual income of the college site fund shall each year be added to the capital of that fund. 10

College Fund

22. College fund—(1) The college fund shall be administered by the Board.

(2) The net annual income of the college fund shall each year be applied by the Board, in accordance with the directions of Synod issued in accordance with **section 25** of this Act, for the purposes of— 15

(a) Acquiring, constructing, providing, repairing, or maintaining land and buildings used or to be used by Knox College or any other college comprising part of the college site fund; or 20

(b) Repaying any money borrowed at any time for such purposes.

(3) Any income not expended in any year in accordance with this section shall be carried forward and be available for expenditure in the following year. 25

(4) Notwithstanding **subsection (3)** of this section, Synod may from time to time direct, in accordance with **section 25** of this Act, that all or any specified part of such unexpended income be added to the capital of the college fund; and the Board shall capitalise that part in accordance with the direction. 30

Synod Procedure

23. Regulations of Synod—(1) The regulations of Synod to be made for the purposes of this Act shall be made in the following manner: 35

(a) They shall be passed as an Interim Act of Synod:

(b) One copy of the Interim Act, together with written notice of the date on which Synod intends to finally adopt it, shall be sent to— 40

(i) Each Minister and Elder who is for the time being a member of Synod; and

(ii) Each Presbytery within the bounds of Synod:

- (c) Each Presbytery under the jurisdiction of Synod shall be sent one more copy of the Interim Act and notice that there are Sessions within its bounds:
- 5 (d) Each such Presbytery shall thereupon send a copy of the Interim Act and notice to each Session within its bounds:
- (e) Each such Session shall be entitled to appear before, and be heard by, its Presbytery on the subject of the Interim Act:
- 10 (f) If any such Session disagrees with its Presbytery's recommendation to Synod on that subject, that Session shall be entitled to appear before, and be heard by, Synod on that subject before the Interim Act is adopted by Synod and before any alteration is
- 15 (2) On the completion of the procedure prescribed by subsection (1) of this section, Synod may pass and adopt the Interim Act, with or without amendment, as regulations of Synod.

20 **24. Delegation by Synod**—(1) When it is desired that directions be given by Synod for the purposes of this Act, Synod may at any time, by resolution, delegate the power to give such directions, either generally or in respect of any particular case or class of case, to—

- 25 (a) Any Presbytery; or
(b) A special commission appointed in accordance with the usages of Synod; or
(c) A special committee of Synod.
- 30 (2) Subject to any general or special directions given or conditions or restrictions imposed by Synod, the body to which any such power is so delegated may exercise that power in the same manner and with the same effect as Synod.
- (3) Every body purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance
- 35 with its terms in the absence of proof to the contrary.
- (4) A delegation under this section shall not affect the exercise of any power by Synod.
- (5) Synod may at any time, by resolution, vary or revoke any
- 40 delegation under this section, but any such variation or revocation shall not take effect until it has been communicated to the delegate.
- (6) Every delegation and variation or revocation of a delegation under this section shall be evidenced by a certificate

under the hand of the Moderator or Clerk of Synod or of some other person authorised in that behalf by Synod.

25. Directions of Synod—The directions of Synod issued for the purposes of this Act shall be made by way of—

- (a) Regulations in force under **section 23** of this Act; or 5
- (b) A delegation in force under **section 24** of this Act.

Board's Accounts

26. Board's accounts—(1) Each accounting year of the Board shall end with the 31st day of December in each year.

(2) On or before the 15th day of February in each year the Board shall cause to be prepared, audited, and furnished to Synod such accounting statements as are necessary to fully and fairly reflect the financial operations of the Board for the immediately preceding accounting year and its financial position at the end of that accounting year. 10

(3) The dates of the 31st day of December and the 15th day of February referred to in this section may be varied from time to time by agreement between the Board and Synod. 15

27. Budgeting—The Board shall—

- (a) Establish a budget of funds expected to be available for allocation from the various funds referred to in this Act and make that information available to Synod within 1 month after the end of each accounting year; and 20
- (b) Adopt such accounting policies and standards as will fairly and accurately inform Synod to enable Synod to measure and assess performance against any budget of expected funds. 25

28. Expenditure—(1) All money that the Board is required to expend in respect of any fund referred to in this Act or of any asset held in the name of the Board shall be debited to the respective fund or asset. 30

(2) If the income or capital of any such fund or asset is insufficient to meet any expenditure incurred in respect of it, the Board may debit the amount of the insufficiency to, and recover it from, the ecclesiastical fund or the educational fund. 35

29. Liabilities—(1) The liability of the Board in respect of—

- (a) Money raised upon the security of assets held in the name of the Board shall be limited to those assets, unless

and to the extent that the Board extends that commitment under its common seal:

5 (b) Guarantees or other commitments entered into by the Board and not expressed to be in respect of any specific asset or trust shall be limited to and may be enforced only to the extent of the Board's general assets that are not held upon trust:

10 (c) Guarantees or other commitments entered into by the Board that are expressed to be in respect of a specific asset or trust and that are not secured against any asset of the Board shall be limited to the assets of that trust and the general assets of the Board.

15 (2) If any such liability has been incurred in order to provide money or credit for any congregation and the income or capital of any such asset or trust is insufficient to meet that liability, the Board may debit the amount of the insufficiency to, and recover it from, the ecclesiastical fund or the educational fund.

Deacons' Courts

20 **30. Incorporation of Deacons' Courts**—(1) Any unincorporated Deacons' Court, by application, in form 2 in the Schedule to this Act signed by the Chairman and Clerk of the Deacons' Court and with the Board's consent endorsed on it, may apply to the Registrar of the High Court at Dunedin for incorporation.

25 (2) Upon receipt of any such application, the Registrar shall issue to the Clerk of the Deacons' Court a certificate of incorporation in form 3 in the Schedule to this Act.

30 (3) On the issue of such a certificate of incorporation, the members of the Deacons' Court shall become a body corporate with the name specified in that certificate.

35 (4) Every such body corporate shall have perpetual succession and a common seal, and, subject to this Act, shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued, and of doing all such acts and things as bodies corporate may lawfully do and suffer.

40 (5) Every certificate of incorporation issued under this section shall be sufficient evidence, in absence of proof to the contrary, that all the requirements of this Act in respect of such incorporation and of matters precedent and incidental thereto have been complied with, and that the Deacons' Court is authorised to be incorporated and has been duly incorporated under this Act.

31. Incorporated Deacons' Court may use word "Incorporated" in its name—Notwithstanding section 3 of the Incorporated Societies Amendment Act 1953, any Deacons' Court incorporated under this Act may use the word "Incorporated" as the last word of its name.

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32. Existing incorporated Deacons' Courts—Every Deacons' Court incorporated under the Otago Foundation Trust Board Act 1962 or the corresponding provisions of any previous enactment, and which is so incorporated immediately before the commencement of this section, shall on such commencement be deemed to have been incorporated under this Act.

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33. Vesting of assets—(1) The issue of a certificate of incorporation under section 30 of this Act shall have the effect of vesting all real and personal property held by—

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- (a) The members of the Deacons' Court to which the certificate relates in their capacity as such; or
- (b) Any such member; or
- (c) Any other person—

on behalf of the Deacons' Court, in the incorporated Deacons' Court without further conveyance or other assignment.

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(2) On receipt by the appropriate District Land Registrar, or any other person charged with the keeping of any books or registers, of—

- (a) A written request from an incorporated Deacons' Court, under its seal, incorporating a reference to this section; and

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- (b) The relevant certificate of title or other document of proprietorship; and

- (c) A copy of the certificate of incorporation of the Deacons' Court; and

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- (d) A statutory declaration in respect of the property to which the request relates, made by all of the registered proprietors (up to a maximum of 3 declarants) or by any 3 persons acting as Deacons of the Deacons' Court, to the effect that the property has become vested in the incorporated Deacons' Court by virtue of this section; and

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- (e) The prescribed fee (if any),—

the District Land Registrar or other person shall make such entries in his or her registers and on any outstanding documents of title or proprietorship and generally do all such things as may be necessary to give effect to the provisions of

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subsection (1) of this section in respect of the property specified in the request.

5 **34. Continuation of rights and liabilities**—On the issue of a certificate of incorporation under section 30 of this Act, all rights, remedies, and powers existing as at the date of incorporation or which may, on or after that date, exist, arise under, upon, or in respect of, any deed, contract, instrument, matter, or thing made, entered into, or done by all or any of the former, existing, or future members of an incorporated
10 Deacons' Court shall be exercised and enforced only by or against, as the case may be, the incorporated Deacons' Court.

35. Powers of incorporated Deacons' Courts—(1) Every Deacons' Court incorporated under this Act shall, subject to this Act, have all the powers of a natural person.

15 (2) A Deacons' Court so incorporated shall not purchase, acquire, sell, exchange, dispose of, mortgage or otherwise pledge any land or interest in land without the written consent of the Board evidenced under the seal of the Board.

36. Common seal—(1) The form of every incorporated
20 Deacons' Court's common seal shall be such as is determined from time to time by the Deacons' Court.

 (2) The affixing of an incorporated Deacons' Court's common seal shall be attested by at least 3 Deacons.

25 (3) The fact that any Deacon attests the affixing of the common seal shall be sufficient evidence that he or she is a Deacon in the absence of proof to the contrary.

37. Contracts of incorporated Deacons' Courts—(1) Any contract that, if made between private persons, must be by deed shall, if made by an incorporated Deacons' Court, be in
30 writing under the common seal of the Deacons' Court.

 (2) Any contract that, if made between private persons, must be in writing signed by the persons to be charged therewith shall, if made by an incorporated Deacons' Court, be in writing either under the common seal of the Deacons' Court or signed
35 by any person acting on behalf of and under the express or implied authority of the Deacons' Court.

 (3) Any contract that, if made between private persons may be made orally may, if made by an incorporated Deacons' Court, be made in the manner specified in subsection (1) of this
40 section, or in the manner specified in subsection (2) of this

section, or orally by any person acting on behalf of and under the express or implied authority of the Deacons' Court.

38. Defective appointments—Anything done by any person purporting to act as a member of any incorporated Deacons' Court shall be valid notwithstanding any defect that may exist or be afterwards discovered in his or her appointment as such a member. 5

39. Change of name—(1) Any incorporated Deacons' Court may apply in **form 4** in the Schedule to this Act, under its common seal and with the endorsed consent of the Board, to the Registrar of the High Court at Dunedin to change its name to the name shown in the application. 10

(2) Upon receipt of any such application, the Registrar shall issue to the Clerk of the Deacons' Court a certificate in **form 5** in the Schedule to this Act. 15

(3) On the issue of such a certificate the Deacons' Court to which it relates shall thereafter be known by its new name but otherwise shall be the same body corporate.

(4) On receipt by the appropriate District Land Registrar, or any other person charged with the keeping of any books or registers, of— 20

(a) A written request from an incorporated Deacons' Court, under its seal, incorporating a reference to this section; and

(b) The relevant certificate of title or other document of proprietorship; and 25

(c) A copy of the certificate of change of name; and

(d) The prescribed fee (if any),—

the District Land Registrar or other person shall make such entries in his or her registers and on any outstanding documents of title or proprietorship and generally do all such things as may be necessary to show the change of name in those registers and on those documents. 30

40. Management by Synod and Board—(1) If— 35

(a) Any congregation ceases to exist; or

(b) The members of any congregation become so divided as to render the continued existence of the congregation, in Synod's opinion, undesirable; or

(c) There is no person or body residing or existing within the Provincial District of Otago capable of dealing with the property of any congregation; or 40

(d) Any person or body corporate in whom or in which the property of any congregation is vested fails to obey or carry out the direction of Synod as to the manner in which such property or its income or proceeds should be held or applied; or

5 (e) The Deacons' Court of any congregation (whether incorporated or unincorporated) so requests,—
Synod may direct, in accordance with **section 25 (a)** of this Act or (in the case of a request made under **paragraph (e)** of this subsection) in accordance with **section 25 (b)** of this Act, that all
10 property held by the Deacons' Court (whether incorporated or unincorporated) of any such congregation, or by any person or body on behalf of any such Deacons' Court, or otherwise belonging to any such Deacons' Court, shall be held or disposed
15 of, and the income and proceeds thereof applied, as specified in the direction of Synod.

(2) With the consent of the Board, Synod may direct, pursuant to **subsection (1)** of this section, that all property or its administration shall vest in the Board as trustee on and after
20 such date as may be specified in the direction.

(3) On the issue of a direction pursuant to **subsection (2)** of this section, the Clerk of Synod shall issue a certificate in **form 6** in the Schedule to this Act; and, in the absence of proof to the contrary, that certificate shall be sufficient evidence of the
25 correctness of the matters referred to in it.

(4) On the issue of a certificate pursuant to **subsection (3)** of this section, the Board shall determine whether it will exercise its powers in respect of the property to which the certificate relates either in its own name or in the name and on behalf of
30 the Deacons' Court referred to in the certificate.

(5) When the Board has made a determination under **subsection (4)** of this section, the Factor shall issue a certificate in **form 7** in the Schedule to this Act in respect of the property to which the determination relates; and, in the absence of proof to
35 the contrary, that certificate shall be sufficient evidence of the correctness of the matters referred to in it.

(6) On the issue of a certificate under **subsection (5)** of this section, the Board shall have full power to transfer, assign, or otherwise deal with the property or interest in property to which the certificate relates, either in its own name or in the name and on behalf of the Deacons' Court referred to in the certificate, whichever is specified in the certificate.

41. Application for cancellation of incorporation by Synod—(1) With the consent of the Board, Synod may include

in any direction given under **section 40 (1)** of this Act in respect of an incorporated Deacons' Court a requirement that an application for cancellation of incorporation be made.

(2) If such a requirement is made, the Clerk of Synod shall make an application in **form 8** in the Schedule to this Act, incorporating the consent of the Board, to the Registrar of the High Court at Dunedin for the cancellation of the incorporation of the Deacons' Court in respect of which the requirement was made. 5

42. Application for cancellation of incorporation by Deacons' Court—Any incorporated Deacons' Court may at any time apply, under its seal, in **form 9** in the Schedule to this Act, incorporating the consent of the Board, for the cancellation of the incorporation of the Deacons' Court. 10

43. Cancellation of incorporation—On receiving an application for cancellation of incorporation under **section 41 or section 42** of this Act, the Registrar of the High Court at Dunedin shall issue to the Factor a certificate of cancellation of incorporation in **form 10** in the Schedule to this Act. 15

44. Assets, etc. transferred to manse fund on cancellation—On the issue of a certificate of cancellation of incorporation under **section 43** of this Act, the net assets or liabilities, as the case may be, of the Deacons' Court to which the cancellation relates shall without further conveyance or other assignment be transferred into and form part of the capital of the manse fund and shall be administered by the Board as part of that fund. 20 25

Repeals and Savings

45. Repeals and savings—(1) The following enactments are hereby repealed: 30

- (a) The Otago Foundation Trust Board Act 1962:
- (b) The Otago Foundation Trust Board Amendment Act 1968:
- (c) The Otago Foundation Trust Board Amendment Act 1986. 35

(2) Notwithstanding the repeal of the Otago Foundation Trust Board Amendment Act 1968, the provisions of subsections (3) and (4) of section 3 of that Act shall continue in force and operate as if such repeal had not been made.

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

SCHEDULE

Form 1

Section 7

MINUTE OF APPOINTMENT OF TRUSTEE OF OTAGO FOUNDATION TRUST
BOARD

Section 7, Otago Foundation Trust Board Act 1992

The trustees of the Otago Foundation Trust Board appointed [*Full name, occupation, and address*] to be a trustee of that Board on [*Insert date*].

On and after that date the trustees are—

[*List names of all trustees*]

Dated at this day of 19

[*Signature of Presiding Member*]

Presiding Member of Board

Witness to signature of Presiding Member

[*Signature of witness*]

[*Occupation*]

[*Address*]

Certified correct for the purposes of section 8 of the Otago Foundation Trust Board Act 1992.

[*Signature*]

Presiding Member of Board *or* Factor

SCHEDULE—*continued*

Section 30(1)

Form 2

APPLICATION FOR INCORPORATION OF DEACON'S COURT
Section 30, Otago Foundation Trust Board Act 1992

To the Registrar of the High Court, Dunedin

The members of the Deacons' Court of the [*Name of congregation*] congregation in the Provincial District of Otago hereby apply for the following persons and their successors in office, being Deacons for the time being of the said congregation, to be incorporated under the name [*Insert proposed name*] pursuant to the Otago Foundation Trust Board Act 1992.

The present Deacons are—

[*List names of Deacons*]

Dated at this day of 19

[*Signature*]

Chairman of the said Deacons' Court

Witness to signature of Chairman

[*Signature of witness*][*Occupation*][*Address*][*Signature*]

Clerk of the said Deacons' Court

SCHEDULE—*continued*

Form 2—*continued*

Witness to signature of Clerk

[*Signature of witness*]

[*Occupation*]

[*Address*]

Declaration in Support

I, [*Full name, occupation, and address*] solemnly and sincerely declare that—

1. I am the Clerk of the said Deacons' Court.
2. At a duly convened meeting of the said Deacons' Court held on [*Insert date*] it was resolved by at least two-thirds of the members present to make this application for incorporation.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declare at this)
 day of 19 ,)
before me:

A Solicitor of the High Court of New Zealand [*Or other person authorised to take a statutory declaration*]

Consent of Otago Foundation Trust Board

The Otago Foundation Trust Board hereby consents to this application.

The common seal of
the Otago Foundation
Trust Board was affixed
hereto on the day of
 19 and attested
by us as trustees:)

[*Signatures of at least 3 trustees*]

SCHEDULE—*continued*

Section 30 (2)

Form 3

CERTIFICATE OF INCORPORATION OF DEACONS' COURT
Section 30, Otago Foundation Trust Board Act 1992

It is hereby certified that all the present and future members of the Deacons' Court of [*Name of congregation*] congregation in the Provincial District of Otago have on the _____ day of _____ 19____ been incorporated under the name [*Insert name*] pursuant to the Otago Foundation Trust Board Act 1992.

Given under my hand
and seal at Dunedin
this _____ day of _____
19____ } [L.S.]

Registrar or Deputy Registrar

SCHEDULE—continued

Form 4

Section 39 (1)

APPLICATION TO CHANGE NAME OF DEACONS' COURT
Section 39, Otago Foundation Trust Board Act 1992

To the Registrar of the High Court, Dunedin

The [*Present name of incorporated Deacons' Court*] hereby applies to change its name to [*Proposed new name*].

The common seal of the
[*Name of Deacons' Court*]
Incorporated was affixed
hereto on the day of
 19 and attested
by us as Deacons:)

[*Signatures of at least 3 Deacons*]

Declaration in Support

I, [*Full name, occupation, and address*] solemnly and sincerely declare that—

1. I am the Clerk of the said Deacons' Court.
2. At a duly convened meeting of the said Deacons' Court held on [*Insert date*] it was resolved by at least two-thirds of the members present to make this application for a change of name.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at this)
 day of 19 ,)
before me:

A Solicitor of the High Court of New Zealand [*Or other person authorised to take a statutory declaration*]

Consent of Otago Foundation Trust Board

The Otago Foundation Trust Board hereby consents to this application.

SCHEDULE—*continued*Form 4—*continued*

The common seal of
the Otago Foundation
Trust Board was affixed
hereto on the day of
 19 and attested
by us as trustees:

}
}
}

[Signatures of at least 3 trustees]

Section 39 (2)

Form 5

CERTIFICATE OF CHANGE OF NAME OF DEACONS' COURT
Section 39, Otago Foundation Trust Board Act 1992

It is hereby certified that the [*Old name*] has on the day of
19 been changed to [*New name*] pursuant to the Otago Foundation
Trust Board Act 1992.

Given under my hand
and seal at Dunedin
this day of
19

}
}
}

[L.S.]

Registrar *or* Deputy Registrar

SCHEDULE—*continued*

Form 6

Section 40 (3)

CERTIFICATE OF DIRECTION OF SYNOD VESTING PROPERTY OR
ADMINISTRATION OF PROPERTY OF DEACONS' COURT IN OTAGO
FOUNDATION TRUST BOARD

Section 40, Otago Foundation Trust Board Act 1992

I hereby certify that by a direction of Synod given pursuant to section 40 (1) (a) or (b) or (c) or (d) or (e) of the Otago Foundation Trust Board Act 1992 on [*Insert date of direction*] all property of or the administration of all property of [*Name of Deacons' Court*] is to vest in the Otago Foundation Trust Board as trustee on and after [*Insert effective date*].

On issuing its certificate of acceptance, that Board shall have full power to transfer, assign, or otherwise deal with the property or interest in property specified in that certificate either in its own name or in the name and on behalf of the said Deacons' Court.

Dated at this day of 19

[*Signature*]

Clerk of Synod

Witness to signature of Clerk of Synod

[*Signature of witness*]

[*Occupation*]

[*Address*]

SCHEDULE—*continued*

Section 40 (5)

Form 7

CERTIFICATE OF ACCEPTANCE BY OTAGO FOUNDATION TRUST BOARD OF
PROPERTY OF DEACONS' COURT

Section 40, Otago Foundation Trust Board Act 1992

I [*Full name*], being the Factor of the Otago Foundation Trust Board, certify that—

- (a) By virtue of a direction of Synod given pursuant to section 40 of the Otago Foundation Trust Board Act 1992 on [*Insert date of direction*] the Otago Foundation Trust Board has, in accordance with section 40 (5) of that Act, full power to transfer, assign, or otherwise deal with all property of [*Name of Deacons' Court*] on and after [*Insert effective date*].
- (b) The following property of the said Deacons' Court is the property to which the said direction relates:
- [*Insert particulars of property*]
- (c) The Otago Foundation Trust Board has accepted that it acts as trustee in respect of the said property.
- (d) The Board has determined to exercise its powers in respect of the said property in its own name *or* in the name and on behalf of the said Deacons' Court.

Dated at this day of 19

[*Signature*]

Factor

Witness to signature of Factor

[*Signature of witness*][*Occupation*][*Address*]

—

SCHEDULE—*continued*

Form 8

Section 41 (2)

APPLICATION FOR CANCELLATION OF INCORPORATION OF DEACONS' COURT
AT DIRECTION OF SYNOD

Section 41, Otago Foundation Trust Board Act 1992

To the Registrar of the High Court, Dunedin

In accordance with the requirement of Synod, I hereby apply for the
cancellation of the incorporation of [*Name of Deacons' Court*].

Dated at this day of 19

[*Signature*]

Clerk of Synod

Witness to signature of Clerk of Synod

[*Signature of witness*]

[*Occupation*]

[*Address*]

Declaration in Support

I, [*Full name, occupation, and address*] solemnly and sincerely declare that—

1. I am the Clerk of Synod.
2. In a direction of Synod given on [*Insert date of direction*] there was included, pursuant to **section 41** of the Otago Foundation Trust Board Act **1992**, a requirement that an application be made for the cancellation of the incorporation of [*Name of Deacons' Court*].

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

SCHEDULE—continued

Form 8—continued

Declared at this }
 day of 19 , }
before me:

A Solicitor of the High Court of New Zealand [*Or other person authorised to take a statutory declaration*]

Consent of Otago Foundation Trust Board

The Otago Foundation Trust Board hereby consents to this application.

The common seal of }
the Otago Foundation }
Trust Board was affixed }
hereto on the day of }
 19 and attested }
by us as trustees:

[Signatures of at least 3 trustees]

SCHEDULE—continued

Form 9

Section 42

APPLICATION FOR CANCELLATION OF INCORPORATION BY DEACONS' COURT
Section 42, Otago Foundation Trust Board Act 1992

To the Registrar of the High Court, Dunedin
The [Name of Deacons' Court] hereby applies for the cancellation of its incorporation.

The common seal of the
[Name of Deacons' Court] }
Incorporated was affixed }
hereto on the day of }
 19 and attested by }
us as Deacons: }

[Signatures of at least 3 Deacons]

Declaration in Support

I, [Full name, occupation, and address] solemnly and sincerely declare that—

1. I am the Clerk of the said Deacons' Court.
2. At a duly convened meeting of the said Deacons' Court held on [Insert date] it was resolved by at least two-thirds of the members present to make the application for cancellation of incorporation.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at this }
 day of 19 , }
before me: }

A Solicitor of the High Court of New Zealand [Or other person authorised to take a statutory declaration]

Consent of Otago Foundation Trust Board

The Otago Foundation Trust Board hereby consents to this application.

SCHEDULE—*continued*Form 9—*continued*

The common seal of
the Otago Foundation
Trust Board was affixed
hereto on the day of
 19 and attested
by us as trustees:

}
}
}

[*Signatures of at least 3 trustees*]

Section 43

Form 10

CERTIFICATE OF CANCELLATION OF INCORPORATION OF DEACONS' COURT
Section 43, Otago Foundation Trust Board Act 1992

It is hereby certified that the incorporation of [*Name of Deacons' Court*] is cancelled as from the date of this certificate.

Given under my hand
and seal at Dunedin
this day of
19

}
}
}

[L.S.]

Registrar *or* Deputy Registrar