

Mr Cotterill

WANGANUI ORPHANAGE TRUST EXTENSION

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to extend the terms of a certain deed of trust known as the Wanganui Orphanage Trust to enable the assets and income thereof to be applied for the assistance of
5 **intellectually handicapped children.**

WHEREAS by deed of trust executed in the year 1890, a copy of which incomplete as to signatures and date is set out in the First Schedule to this Act (hereinafter called the said deed), John Tiffen Stewart, of Wanganui, engineer, and
10 William Hodgson Barnicoat, of Wanganui, solicitor (hereinafter called the said trustees), declared that they held a certain freehold property more particularly described in the schedule to the said deed together with certain chattels contained in buildings on the said property and the rents and
15 profits of such property and chattels upon trust so long as the said trustees, or other the trustees for the time being (who shall hereinafter be deemed to be included in the expression the said trustees), of the said property and chattels should in their absolute discretion consider it advisable to permit
20 the said property and chattels and all property for the time being held by the said trustees subject to the trusts of the said deed (all hereinafter referred to as the Trust property) to be

appropriated and used as and for an asylum or home for the maintenance of destitute children and the education or bringing up of such children in the Protestant faith and upon the further trusts and subject to the powers more particularly set out in the said deed: And whereas, pursuant to the terms 5 of the said deed, the said trustees for many years operated an institution in the City of Wanganui known as the Wanganui Orphanage (hereinafter called the said orphanage): And whereas the said trustees since the dates respectively hereinafter mentioned have been the following persons, namely, 10 William Charles Fairhall Treadwell, of Wanganui, solicitor, since the twenty-first day of March, nineteen hundred and thirty-eight, and Ernest Harry Poynter, of Wanganui, bookseller, since the fourth day of November, nineteen hundred and forty-one: And whereas the original of the said deed has 15 been lost and by declaration of trust bearing date the twenty-ninth day of March, nineteen hundred and fifty-five (a copy of which is set out in the Second Schedule to this Act), the said trustees declared that they held the trust property for and on behalf of the said orphanage and upon and subject 20 to the trusts set forth in the incomplete copy of the said deed: And whereas in December nineteen hundred and fifty-four the committee controlling the said orphanage, pursuant to the rules contained in the said deed, decided to close the said orphanage by reason of the fact that an insufficiency of destitute 25 children and orphans rendered it uneconomic and impracticable to carry on the said orphanage: And whereas, by reason of such insufficiency of destitute children and orphans, the said trustees in the year nineteen hundred and fifty-six applied to the Supreme Court of New Zealand for 30 authority to permit the Wanganui branch of the Handicapped Children's Parents Association Incorporated (hereinafter called the said association) to use and occupy certain land and buildings which formed part of the trust property and which were previously used as the said orphanage, and for 35 further authority to apply in their discretion the whole or any part of the annual income of the trust property to further the activities of the said association: And whereas, by order bearing date the thirteenth day of September, nineteen hundred and fifty-six, the Supreme Court of New Zealand 40 duly granted such authority to the said trustees and by subsequent orders extended such authority to the first day of September, nineteen hundred and sixty: And whereas, pursuant to such authority, the said trustees have since the

thirteenth day of September, nineteen hundred and fifty-six, permitted the said association to use and occupy the said land and buildings for the purpose of conducting therein a school for intellectually handicapped children and have applied most
5 of the income from the trust property to assist the said association in conducting such school: And whereas the said trustees are desirous of continuing to assist the said association in the manner hereinbefore described or in some similar manner for so long as such assistance is warranted and circumstances
10 continue to render it impracticable to carry out the original terms of the said deed but without abrogating such original terms: And whereas the Supreme Court of New Zealand has no jurisdiction to vary the terms of the said deed to enable the trustees to assist the said association as hereinbefore
15 mentioned for an indefinite time while still retaining the power to carry out the original terms of the said deed should future circumstances render it practicable to do so: And whereas, owing to an insufficiency of destitute children in the City of Wanganui and surrounding district, it continues at
20 present to be uneconomic and impracticable for the said trustees to carry out the original terms of the said deed: And whereas for the purpose of making the best practicable use of the trust property and in particular the land and buildings previously used as the said orphanage for furtherance of the
25 charitable intentions of the persons who have from time to time donated or bequeathed property which now comprises the trust property it is expedient to extend and vary as hereinafter appearing the trusts created by the said deed: And whereas the objects of this Act are not attainable otherwise
30 than by legislation:

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

1. **Short Title**—This Act may be cited as the Wanganui
35 Orphanage Trust Extension Act 1960.

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

40 “The association” means the Wanganui branch of the Intellectually Handicapped Children’s Parents Association Incorporated:

“The deed of trust” means the deed of trust a copy of which incomplete as to signatures and date is set out in the First Schedule to this Act;

“The trustees” means the trustees from time to time for the time being of the said deed of trust:

“Trust property” means the assets held by the trustees from time to time including accumulations in income.

3. Powers of trustees—In addition to the powers authorised and the discretions contained in the deed of trust and without derogating therefrom the trustees may: 5

(a) In their absolute discretion permit the said association to use and occupy such part or parts of the trust property for such period or periods as the trustees from time to time think fit, or otherside permit such part or parts of the trust property to be used for the benefit of intellectually handicapped children in New Zealand: 10

(b) In their absolute discretion apply the whole or part of the income arising from the trust property to assist and further the activities of the association or the welfare of intellectually handicapped children in New Zealand: 15

(c) With the consent of the Supreme Court of New Zealand, from time to time to expend the whole or any part of the capital of the trust property in the provision of schools, hostels, and other buildings and erections, including the land whereon the same may be situate or erected for the education, accommodation, and benefit of intellectually handicapped children in New Zealand. 20 25

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

SCHEDULES

FIRST SCHEDULE

DEED OF TRUST

To all to whom these presents shall come we John Tiffen Stewart of Wanganui in the Provincial District of Wellington in New Zealand Civil Engineer and William Hodgson Barnicoat of the same place solicitor send greeting whereas the piece or parcel of land particularly described in the First Schedule hereto with the buildings thereon has been transferred to us by William James Smith in consideration of the sum of one hundred and twenty pounds (£120) paid by us to the said William James Smith And whereas the purchase money for the said piece or parcel of land was contributed by different persons in the Town of Wanganui upon the understanding that the said piece or parcel of land with certain goods furniture and chattels in the buildings thereon should be held by us upon the trusts and subject to the provisions and declarations hereinafter declared now these presents witness that in consideration of the premises it is hereby declared and agreed that we the said John Tiffen Stewart and William Hodgson Barnicoat and our heirs executors administrators and assigns shall stand and be seized of and interested in the said piece or parcel of land and the rents and profits thereof and in the said goods furniture and chattels upon the trusts and with under and subject to the powers provisions and declarations hereinafter contained (that is to say) upon trust subject to the provisos hereinafter contained so long as we the said trustees (which expression "the said trustees" wherever used herein shall be deemed to include as well as the said John Tiffen Stewart and William Hodgson Barnicoat as the survivor of us or the trustees or trustee for the time being of the said land and premises their or his assigns) shall in our absolute discretion consider it advisable to permit the said land and all buildings erected or to be erected thereon (which said land and buildings and the said goods furniture and chattels and also all property for the time being held by the said trustees subject to the trusts of these presents are hereinafter referred to as "the said Institution") to be appropriated and used as and for an asylum or home for the maintenance of destitute children and the education or bringing up of such children in the Protestant faith Provided always and it is hereby declared that subject to the trusts and provisions herein contained the control and management of the said institution and of the funds and endowments thereof shall be regulated in accordance with the rules contained in the Second Schedule hereto and upon further trust at the like discretion to hold the said lands and premises for an asylum or home for destitute children upon the said land or in some other place in or near the Town of Wanganui and upon further trust at the like discretion with and out of the said rents and profits from time to time to keep in good and substantial repair the buildings fences and other erections for the time being standing on the said land and at the like discretion out of the said rents and profits to alter or add to the said buildings and to buy a new site for the said asylum or home and to build a new asylum or home and at the like discretion to apply the whole or any part of the rents and profits of the said land and premises generally for the

FIRST SCHEDULE—*continued*

benefit of the said institution wheresoever the same may for the time being be established Provided always and it is hereby agreed and declared that it shall be lawful for the said trustees at any time to lease all or any part of the said lands and hereditaments for any term of years (absolute or determinable at the option of either party or of one party only) not exceeding twenty one years to take effect in possession or within six calendar months after the date of the lease and such lease may be at a varying rental and subject to such covenants and conditions as the trustees think fit and also from time to time to sell all or any part of the said lands and hereditaments at such price as can be reasonably obtained for the same and it is hereby declared that any such sale as aforesaid may be made either by public auction or private contract and that the said trustees may make any stipulations as to title or evidence or commencement of title or otherwise in any conditions of sale or contract for sale of the said land and hereditaments or any part thereof and may buy in or vary any contract for sale and resell without being responsible for any loss occasioned thereby Provided always and it is hereby agreed and declared that it shall be lawful for the said trustees at any time and from time to time to mortgage the whole or any part of the said lands and hereditaments and for such sum or sums and subject to such provisions as they shall think fit and no mortgagee advancing money upon any mortgage purporting to be made under this power shall be bound to see that such money is wanted or that no more than is wanted is raised and it is hereby agreed and declared that the said trustees may by and out of the said rents or profits pay and discharge any interest or other claims to become payable under any mortgage to be made under the power hereinbefore contained and it is hereby further agreed and declared that the said trustees shall stand possessed of the rents and other moneys arising from any lease or leases made under the power of leasing hereinbefore contained and of the proceeds of sale and moneys raised by mortgage obtained by any sale or mortgage made under the respective powers of sale and mortgage hereinbefore contained upon the same trusts and with under and subject to the same powers provisions and declarations as are herein declared or provided concerning the rents and profits of the said lands and hereditaments or any part thereof Provided always and it is hereby agreed and declared that if we the said John Tiffin Stewart and William Hodgson Barnicoat or either of us or his assigns or any future trustee or trustees for the time being acting under the trusts hereof or to be appointed by the Supreme Court of New Zealand shall die or shall decline to act or shall be absent from the provincial district of Wellington in the Colony of New Zealand for the space of six calendar months or shall be desirous of being discharged from or become incapable of acting in the said trust as aforesaid then and in every such case it shall be lawful for the surviving or continuing trustee or trustees (and for this purpose every refusing or retiring trustee shall if willing to act in the execution of this power be considered a continuing trustee) or for the trustee or trustees remaining in the provincial district aforesaid without the consent of any person or persons whatsoever to appoint by deed any person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or declining to act or being absent or being desirous

FIRST SCHEDULE—*continued*

of being discharged or becoming incapable of acting as aforesaid and upon every such appointment the number of trustees may be augmented or reduced and upon every such appointment the trust property shall be transferred so that the same may be vested in the trustees or trustee for the time being and every trustee so appointed shall as well before as after such transfer act and assist in the the execution of the trusts and powers of these presents as fully and effectually as if he had hereby been constituted a trustee and it is hereby expressly declared that the powers conferred by any statute to appoint new trustees and other incidental and subsidiary powers and provisions shall be and the same are hereby negated and it is hereby further declared that the said trustees may in their uncontrolled discretion instead of acting personally delegate or leave to the committee for the time being having the actual management of the said institution or any member or members of the said committee or any other person or persons the transaction of any business or doing any act of whatever nature required to be done in the premises including the receipt and payment of money In witness whereof the parties hereto have hereunto set their hands and seals this day of one thousand eight hundred and ninety.

Signed sealed and delivered by the said }
John Tiffen Stewart in the presence of }

Signed sealed and delivered by the said }
William Hodgson Barnicoat in the }
presence of }

The First Schedule Above Referred to

ALL that piece or parcel of land situate in the Provincial District of Wellington containing 16½ perches being part of Suburban Section 16 on the public map of the Town of Wanganui deposited in the office of the Chief Surveyor at Wellington and being the whole of the land comprised and more particularly described in certificate of title Register Book Volume 55 folio 26 as the same is delineated and described in the plan drawn hereon and coloured in outline red.

The Second Schedule Above Referred to

RULES

1. The control and management of the said institution and of the funds and endowments thereof and the selection appointment and dismissal of all persons employed in connection therewith shall be vested in and exercised by a committee consisting of not less than five (5) nor more than persons and the following shall be the first appointed that is to say such persons continuing to be members of some protestant denomination and to be residents in the Borough of Wanganui or within miles thereof.

2. An annual general meeting of the subscribers to the funds of the institution shall be held in the month of July in every year when a balance sheet and statement of affairs shall be laid before the subscribers.

3. At the annual general meeting to be held in the month of July one thousand eight hundred and ninety one and at every succeeding annual general meeting one third of the members of the committee or if their number is not a multiple of three then the number nearest one third shall retire from office but shall be eligible for re-election.

FIRST SCHEDULE—*continued*

4. The one third or nearest number to retire at the annual general meeting in July one thousand eight hundred and ninety one shall unless the committee agree among themselves be determined by ballot. In every subsequent year the one third or other nearest number who have been longest in office shall retire and in case more than one third shall have been in office for the same period those to retire shall be determined by lot.

5. The subscribers shall at each annual general meeting fill up all vacancies in the committee any casual vacancy occurring among the committee may be filled up by the continuing members of the committee but any person so chosen shall retain office until the next annual general meeting.

6. The subscribers in general meetings may from time to time increase or reduce the number of the committee and may alter their qualification and may also determine in what rotation such increased or reduced number is to go out of office. Any person who has during the year preceding the annual general meeting subscribed a sum of at least one pound to the funds of the said institution shall be entitled to vote or take part at any general election.

7. Any person making a donation of £10 (ten pounds) to the funds shall be a life member of the said institution and be entitled to vote and take part at all general meetings.

8. No subscriber who is not entitled to vote at a general meeting or who is not a protestant shall be eligible as a member of committee.

9. No default of election or vacancy shall prevent the other members of the committee from acting until the vacancy or vacancies shall be filled up.

10. The committee shall elect one of their number to be chairman and all matters which shall be brought before any meeting of the committee shall be decided by the majority of the votes of members attending the same and voting upon the question and in case of an equality of votes the chairman for the time being shall have a second or casting vote.

11. At each annual general meeting the subscribers may elect a president and a vice-president of the said institution who shall be *ex-officio* members of committee and it is hereby declared that until the next annual general meeting William James Smith and John Tiffin Stewart are respectively president and vice-president.

12. The subscribers may in general meetings from time to time make alter or repeal bylaws for the regulation of the business of the said institution or its employees or servants and may also add to revoke or alter all or any of these rules.

13. Votes may be given either personally or by proxy. The instrument appointing a proxy shall be in writing under the hand of the appointor. No person shall be appointed a proxy who is not entitled to vote at a general meeting of subscribers.

SECOND SCHEDULE

DECLARATION OF TRUST

To all to whom these presents shall come we Ernest Harry Poynter of Wanganui bookseller and William Charles Fairhall Treadwell of Wanganui solicitor send greeting whereas by deed of trust duly made and executed in or about the year one thousand eight hundred and ninety (hereinafter called "the trust deed") John Tiffen Stewart of Wanganui civil engineer and William Hodgson Barnicoat of the same place solicitor declared that they held certain lands with the buildings and erections thereon therein mentioned for and on behalf of a charitable institution referred to in the trust deed as "the said institution" and now known as "The Wanganui Orphanage" (hereinafter called "the orphanage") and further declared that the orphanage and the funds and endowments thereof would be controlled and managed in accordance with the rules set forth in the second schedule to the trust deed And whereas by several deeds of appointment throughout the years the trusts declared by the trust deed became vested in other trustees until the year one thousand nine hundred and forty one when the said Ernest Harry Poynter and William Charles Fairhall Treadwell (hereinafter called "the trustees") became the duly appointed trustees thereof And whereas the trust deed has been lost and cannot be found but a copy of the trust deed being available to the trustees and other the trustees from time to time of the orphanage the orphanage has been carried on in accordance with the trusts in the trust deed declared and subject to the rules set forth in the second schedule to the trust deed And whereas a copy of the trust deed is hereunto annexed and marked with the letter "A" And whereas the trustees are the present trustees of the orphanage and consider it desirable to set forth in documentary form the trusts upon which they hold the trust property and all accumulations thereof Now therefore these presents witness and the trustees hereby declare that they hold the trust property and all accumulations thereof now vested in them as trustees for and on behalf of the orphanage and upon and subject to the trusts in the trust deed set forth and further declare that the orphanage will be managed and controlled in accordance with the rules set forth in the second schedule to the trust deed.

In witness whereof these presents have been executed this 29th day of March 1955.

Signed by the said Ernest Harry Poynter }
in the presence of:— } E. H. POYNTER

G. S. Swan
Solicitor
Wanganui

Signed by the said William Charles }
Fairhall Treadwell in the presence of:— } W. C. F. TREADWELL

G. S. Swan
Solicitor
Wanganui