



## ANALYSIS

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1983, No. 2—*Private*

**An Act to amend the Kirkpatrick Masonic Institute Empowering Act 1930, to extend and vary the scope of certain trusts created by the will of Samuel Kirkpatrick of Nelson, deceased, relating to the Kirkpatrick Masonic Institute established at Nelson under the said will and presently known as Kirkpatrick House, and to extend and vary the powers of the trustee thereunder**

[4 November 1983]

WHEREAS Samuel Kirkpatrick of Nelson, Manufacturer, died on the 21st day of May 1925 leaving a will dated the 29th day of October 1923, probate whereof was granted to the Public Trustee, the executor and trustee named therein, by the Supreme Court at Wellington on the 6th day of June 1925: And whereas by his said will the testator provided, inter alia,—

- (a) By clause 7 that certain land at Mount Street, Nelson, together with the buildings and erections thereon (being the testator's family residence) and all the plate, linen, china, glass, books, prints, pictures, furniture, and other household effects therein not otherwise disposed of by the said will be given, devised, and bequeathed to permit and allow the Board of Governors constituted by the said will 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 of his residuary estate permit and the Board consider it expedient) the education of the orphan daughters of deceased Freemasons who, in the opinion of the said Board, were of good standing in their respective Lodges; and that for the purposes of the said will the word "orphan" should mean a female child whose father has died, and that such children, being the daughters of deceased Freemasons of either the English, Irish, Scottish, or New Zealand Constitutions, should be eligible for admission to such Institution on the conditions and between the ages from time to time fixed by the Board, and that no part of the said furniture, pictures, chattels, or effects should be sold, exchanged, or otherwise disposed of, but that they should so far as possible be kept in the rooms where the children might see them and not in private rooms of the attendants or manager; and

- (b) By clause 8 that the whole of his estate not therein otherwise disposed of after payment of all estate and succession duty be given, devised, and bequeathed on the specific trusts therein declared and, subject thereto, to pay the income arising therefrom to the said Board to be applied by it for the purposes of carrying on the said Institution referred to in clause 7 of the will; and
- (c) That the Board of Governors referred to should be elected by the Freemasons of all the Masonic Lodges in New Zealand of the English, Irish, Scottish, and New Zealand Constitutions, the number to be fixed by the said Lodges and the manner of rotation and election to be decided by the said Lodges, making certain stipulations as to the qualifications of certain members, and as to the Chairman and as to the meetings of the Board and the making of rules and regulations governing the admission of girls to the said Institution and the manner of conducting and managing the same; and declaring that regard should be had where possible to the scope and management of a similar Institution in England known as "The Masonic Institution for Girls" or some similar name:

And whereas the said Institution established by the said will was opened on the 4th day of April 1926 and became known

as the Kirkpatrick Masonic Institute, but is now known as Kirkpatrick House: And whereas the powers of the trustee and the objects of the said trusts created by the said will were extended and varied by the Kirkpatrick Masonic Institute Empowering Act 1930: And whereas the said trusts created by clauses 7 and 8 of the said will would be of greater public benefit were those trusts not restricted to daughters of Freemasons whose fathers have died, but were widened to include all those daughters of Freemasons, or other female children nominated for admission by a Lodge or other Masonic body, who, from circumstances arising from the death, illness, or misfortune of either or both parents have been placed in a position of need: And whereas a Board was incorporated under the Charitable Trusts Act 1957 on the 15th day of August 1974 in the name of The Board of Governors of Kirkpatrick House: And whereas by reason of the fact that the District Grand Lodge of Westland and Nelson (English Constitution) has ceased to exist, section 5 of the Kirkpatrick Masonic Institute Empowering Act 1930 should be repealed: And whereas it is expedient, in order to promote the continuance of the said trusts created by the said will of the testator, that the trustee be authorised to treat for all purposes connected with the said will The Board of Governors of Kirkpatrick House as constituted from time to time as being identical with the said Board of Governors established by the said will: And whereas The Board of Governors of Kirkpatrick House has made or proposes to make application to the Department of Social Welfare or other relevant Department of State for capitation and other grants in respect of the said Institution and the children admitted thereto: And whereas a condition of making any capitation grant is that the Board of Governors undertakes to make every effort to collect reasonable payments for the maintenance of or towards the cost of caring for each child in respect of whom a grant is made from the parents or guardians of that child but there are doubts as to whether the collection of such payments by the said Board is within the spirit and intendment of the said will: And whereas it is desired to extend the powers of the trustee to invest the residuary estate of the testator: And whereas the objects of this Act are not attainable otherwise than by legislation: And whereas the terms of this Act have been agreed upon and approved by the trustee and by general communications of the Masonic organisations at which persons representing the respective adherent Lodges were entitled to deliberate and vote:

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 Kirkpatrick Masonic Institute Empowering Amendment Act 1983, and shall be read together with and deemed part of the Kirkpatrick Masonic Institute Empowering Act 1930 (hereinafter referred to as the principal Act).

**2. Interpretation**—The principal Act is hereby amended by repealing section 2, and substituting the following section:

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

“ ‘Board’ means the Board of Governors elected under the provisions of the will of the testator for the management of the Institute:

“ ‘Incorporated Board’ means The Board of Governors of Kirkpatrick House incorporated pursuant to the Charitable Trusts Act 1957 on the 15th day of August 1974 as duly constituted from time to time:

“ ‘Institute’ means Kirkpatrick House at Nelson founded under the provisions of the will of the testator:

“ ‘Public Trustee’ means the Public Trustee constituted under the Public Trust Office Act 1957:

“ ‘Residuary estate’ means the estate of the testator held by the Public Trustee upon the trusts set out in clause 8 of the said will of the testator:

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

**3. Scope of trusts**—It shall be and be deemed at all times heretofore to have been lawful for the Board—

(a) To use, manage, and carry on the Institute as a Masonic Institute or Boarding Establishment and to use the income of the residuary estate paid to the Board by the Public Trustee primarily for the boarding and maintenance of female children who are the daughters, whether natural or adopted, of Freemasons of good standing in their respective Lodge of any constitution, or of other female children nominated for admission by a Lodge or other Masonic body, who, from circumstances arising from the death, illness, or misfortune of either or both parents, have been placed in a position of need, and (should the income and capital of the residuary estate

so permit, and the Board considers it expedient) for the education of such female children as aforesaid while they are resident in the Institute and for their further education and advancement in life after they leave the Institute:

Provided that, in deciding whom shall be admitted to the Institute from time to time under this paragraph, the Board shall give absolute preference to those female children who are qualified for admittance thereto under clause 7 of the will of the testator:

- (b) To make application for, and to receive, such Government grants or subsidies in respect of the Institute, or of the female children resident therein, as it thinks fit, and for this purpose to enter into and execute such undertakings, assurances, deeds, or other instruments as may be required by the authority or department making such grants or subsidies:
- (c) To the extent that may be necessary to comply with any undertaking, assurance, deed, or instrument that it may have entered into and executed under paragraph (b) of this section, to require the parents or parent or guardians or guardian of any female child admitted to the Institute to make such reasonable payments, as the Board from time to time specifies, for or towards the maintenance of, or the cost of caring for, any such child.

**4. Recognition of Incorporated Board**—The Incorporated Board shall be deemed to be, and shall at all times since the date upon which it became incorporated under the Charitable Trusts Act 1957 be deemed to have been, the same Board as the Board of Governors established under the will of the testator for the conduct and management of the Institute, and shall for all purposes connected with the will of the testator be recognised by the Public Trustee accordingly:

Provided that the provisions of this section shall cease to have any further effect upon the winding-up or dissolution of the Incorporated Board.

**5. Powers of investment**—All moneys comprised in the residuary estate shall be invested by the Public Trustee in the Common Fund of the Public Trust Office, or (notwithstanding section 30 of the Public Trust Office Act 1957) in such other investments as are authorised by law for the investment of

trust funds, or partly in the Common Fund and partly in such other investments as aforesaid, as the Public Trustee thinks fit having regard to the objects of the trusts on which the said moneys are held.

**6. Repeal**—Section 5 of the principal Act is hereby repealed.

**7. Costs of promoting Act**—All costs, charges, disbursements, and expenses of and incidental to the preparation, obtaining, and passing of this Act or otherwise in relation thereto shall be paid by the Public Trustee out of the capital of the residuary estate.

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

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