

Right Hon. Mr Marshall

PRESBYTERIAN CHURCH PROPERTY AMENDMENT

[PRIVATE]

ANALYSIS

Title	8. Power to join with other persons in lending money on mortgage
Preamble	9. Power to borrow
1. Short Title	10. Power to approve scheme for alternative application of certain funds
2. Interpretation	11. Power to act together with other persons
3. Investment of trust funds	12. Trustees not a moneylender
4. Beneficiary Fund investments	13. Costs of Act
5. Amalgamated Investment Fund	14. Private Act
6. Transfer of trust funds	
7. Power of Trustees to lend or lease to themselves as trustees in a different capacity	

A BILL INTITULED

An Act to amend the Presbyterian Church Property Act 1885

WHEREAS it is expedient that the powers of investment of the Presbyterian Church Property Trustees constituted under the Presbyterian Church Property Act 1885 should be extended; that the Trustees should be empowered to credit different rates of interest to different trusts or classes of trusts represented in the Amalgamated Investment Fund, having regard to the nature and periods of those trusts; that trustees or other persons holding funds on trust for the use or purposes of the Presbyterian Church of New Zealand or any congregation or organisation connected with it, or of that Church or congregation or organisation and other bodies jointly, should be empowered to transfer such funds to the Trustees to be held by them as trustees thereof; that the

No. 123—1

Trustees should be empowered to lend or lease to themselves as trustees in a different capacity; that the Trustees should be empowered to act jointly with other persons or bodies in the exercise of their powers to lend money on mortgage, or in the doing of other things for the benefit of trusts administered by the Trustees; that the borrowing powers of the Trustees should be extended; that the Trustees should be empowered to approve schemes for the alternative application of certain funds held for special objects or purposes connected with or relating to any congregation of the Church if it is impossible or impracticable or inexpedient to carry out those objects or purposes; and that the Trustees should not be deemed to be a moneylender under the Moneylenders Act 1908: And whereas on the 30th day of October 1973 the General Assembly of the Presbyterian Church of New Zealand, by resolution, authorised the Trustees to seek legislation to give effect to the abovementioned purposes:

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 Presbyterian Church Property Amendment Act 1974, and shall be read together with and deemed part of the Presbyterian Church Property Act 1885 (hereinafter referred to as the principal Act).

2. Interpretation—In this Act, unless the context otherwise requires, the term “the Trustees” means the Presbyterian Church Property Trustees constituted as a body corporate under the principal Act.

3. Investment of trust funds—(1) This section shall apply to all trust funds for the time being held by the Trustees in the Amalgamated Investment Fund established under the Presbyterian Church Property Trustees Empowering Act 1957.

(2) The Trustees may from time to time invest any trust funds to which this section applies, whether at the time in a state of investment or not, in all or any of the following investments:

(a) In investments authorised for the investment of trust funds by the Trustee Act 1956 or by any other Act conferring powers on trustees:

- 5 (b) In the purchase or subscription of fully paid ordinary or preference shares, stocks, bonds, or debentures, or notes, whether registered or not, and whether conveying the right of conversion to shares or not, or of any other securities, of any company or other body corporate, that are at the time of acquisition listed on the official list of any stock exchange affiliated to the Stock Exchange Association of New Zealand, or of any stock exchange in the Commonwealth of Australia or any State of the Commonwealth, or in the United Kingdom, or in respect of which application for such listing has been made:
- 10
- 15 (c) In the purchase or other acquisition of any estate or interest in land, including any buildings or other improvements on the land, or in the execution of any works connected with the subdivision, development, improvement, or maintenance of any such property held by the Trustees, including (without in any way limiting the generality of the foregoing) the construction, alteration, repair, renovation, demolition, or reconstruction of, or addition to, any buildings or other improvements erected or intended to be erected on the land:
- 20
- 25 (d) On deposit with such companies or other bodies corporate as the General Assembly of the Presbyterian Church may from time to time by resolution approve (either particularly or by reference to any class or classes of companies or bodies corporate) subject to such conditions (if any) as the General Assembly may specify:
- 30
- (e) In the purchase or subscription of shares in any flat or office owning company within the meaning of the Companies Amendment Act 1964:
- 35 (f) In the purchase of bills of exchange accepted, or promissory notes made, by any company or other body corporate in which at the time of investment it would have been permissible for the Trustees to invest in the purchase of ordinary stock or shares, if before the purchase of the bills or notes they are endorsed by a company or body corporate with which at that time it would have been permissible for the Trustees to invest money on deposit:
- 40
- 45 (g) In the purchase of transferable certificates of deposit issued by any trading bank as defined in section 2 of the Reserve Bank of New Zealand Act 1964.

(3) For the purposes of paragraph (b) of subsection (2) of this section, and without restricting the meaning of the term “fully paid”, shares, stocks, bonds, debentures, notes, or other securities shall be deemed to be fully paid if the calls on them are payable by instalments on such terms that all calls shall be paid within 2 years from the date of initial allotment. 5

(4) In respect of any investment proposed to be made under any of the provisions of paragraphs (b), (c), and (e) of subsection (2) of this section, the Trustees shall first obtain and consider proper advice in writing from a person or persons reasonably believed by the Trustees to be qualified to advise on the investment: 10

Provided that the advice may be given to the Trustees by any of its officers who is so qualified, and that advice need not be in writing. 15

(5) The Trustees may from time to time sell, exchange, vary, or transpose any investments.

(6) The Trustees may from time to time lease or let any land or any estate or interest in land held by them as an investment, for any period and at such rent or rents and on such terms and conditions as the Trustees think fit. 20

(7) The Second Schedule to the principal Act is hereby amended—

(a) By omitting from paragraph (d) of clause 1 the words “in real or Government securities in New Zealand”, and substituting the words “in such investments as are for the time being authorised by this Act for the investment of trust funds”: 25

(b) By omitting from clause 6 (as amended by section 7 of the Presbyterian Church Property Act 1885 Amendment Act 1914) the words “or may be invested in manner set out in section 95 of the Trustee Act 1908”, and substituting the words “or may be invested in such investments as are for the time being authorised by this Act for the investment of trust funds”. 30 35

(8) Section 5 of the Presbyterian Church Property Act 1885 Amendment Act 1914 is hereby amended by omitting from paragraph (e) the words “in the manner set out in section 95 of the Trustee Act 1908”, and substituting the words “in any investments for the time being authorised by the principal Act for the investment of trust funds”. 40

(9) Section 7 of the Presbyterian Church Property Act 1885 Amendment Act 1914 is hereby consequentially repealed.

4. **Beneficiary Fund investments**—Section 5A (1) of the
5 Presbyterian Church Property Act 1885 Amendment Act 1914 (as inserted by section 4 of the Presbyterian Church Property Amendment Act 1963) is hereby amended by inserting, after paragraph (e), the following paragraph:

10 “(ea) In any manner specified in paragraphs (e) to (g) of section 3 (2) of the Presbyterian Church Property Amendment Act 1974:”.

5. **Amalgamated Investment Fund**—(1) Section 3 (1) of the Presbyterian Church Property Trustees Empowering Act 1957 is hereby amended by omitting the words “authorised investments within the meaning of the Trustee Act 1956”, and substituting the words “such investments as are for the time being authorised by the principal Act for the investment of trust funds”.

20 (2) The said section 3 is hereby further amended by repealing subsection (8), and substituting the following subsection:

25 “(8) In each year there shall also be credited out of the Investment Fund Income Account to each trust represented in the Amalgamated Investment Fund, in proportion to the trust’s share of capital in that fund, interest at such rate as the said trustees may from time to time determine. For the purposes of this subsection the said trustees may determine different rates of interest for different trusts or classes of trusts, having regard to the nature and periods of the trusts:
30 “Provided that the aggregate amount so credited to all such trusts, expressed as a percentage of the total capital of the Fund, shall not be lower than $\frac{1}{2}$ percent below the the average rate of interest from the whole of the investments comprised in the Amalgamated Investment Fund.”

35 (3) The said section 3 is hereby further amended by omitting from subsection (11) the words “such securities as are authorised investments within the meaning of the Trustee Act 1956”, and substituting the words “such investments as are for the time being authorised by the principal Act for the investment of trust funds”.

6. Transfer of trust funds—(1) Subject to any direction to the contrary in any instrument creating the trust, any trustees or other persons, whether incorporated or not, now or hereafter holding funds on trust for the use or purposes of the Presbyterian Church of New Zealand or any congregation or organisation connected with it, or of that Church or congregation or organisation and any other body of persons jointly, may transfer the whole or any part of such trust funds to the Trustees to be held by them as trustees thereof. 5

(2) Except so far as a contrary intention is expressed in any instrument creating the trust, the Trustees shall hold any funds transferred to them under subsection (1) of this section with the powers conferred by, and subject to the provisions of, the principal Act and this Act, notwithstanding that the powers of investment conferred on the Trustees by the principal Act and this Act are wider than the powers conferred on the first-mentioned trustees or persons by any instrument creating the trust. 10 15

(3) Any such trustees or persons so transferring the whole or any part of any trust funds to the Trustees shall remain liable for the proper application of the capital and the income of those funds in accordance with any instrument creating the trust, but shall not be liable for any loss of capital occurring by reason of any fall in the capital value of any investment made or retained by the Trustees as trustees or for any reduction of income resulting from expenditure by the Trustees in administration in accordance with the principal Act. 20 25

7. Power of Trustees to lend or lease to themselves as trustees in a different capacity—Notwithstanding any rule of law or practice to the contrary, the Trustees, in their capacity as trustees of any trust property, may— 30

- (a) In the exercise of their powers to invest on real securities, lend money to themselves, on mortgage, in their capacity as trustees of any other trust property: 35
- (b) In the exercise of their powers to lease or let any land, lease or let any land vested in them to themselves in their capacity as trustees of any other trust property.

8. Power to join with other persons in lending money on mortgage—In the exercise of the powers conferred by the Trustee Act 1956 and the principal Act to invest trust funds on real securities, the Trustees may join with any other
5 person or body of persons in lending money on any such security.

9. Power to borrow—(1) For the purpose of exercising in relation to the Amalgamated Investment Fund the powers conferred by section 3 (2) (c) of this Act to purchase any
10 estate or interest in land, or to execute works in connection with the land, the Trustees may from time to time, with the prior consent in each case of the commission appointed by the General Assembly of the Presbyterian Church under section 2 of the Presbyterian Church Property Amendment
15 Act 1930, borrow money by way of mortgage on the security of that estate or interest; but the money so borrowed shall be secured by a mortgage only on the property so purchased or in connection with which the works are to be executed.

(2) The Trustees may from time to time borrow money
20 or arrange credit by way of overdraft at any bank (whether secured or unsecured) for any purpose that is in the opinion of the Trustees of a temporary nature only; but the total amount of all borrowing or credit under this subsection shall not at any time exceed such sum as the General Assembly of
25 the Presbyterian Church may from time to time specify.

(3) The powers conferred on the Trustees by this section shall extend to include power, subject to the requirements of this section, so to borrow or arrange credit for the purpose of meeting any debt or liability of the Trustees incurred for
30 any of the purposes of this section, whether secured or unsecured and whether owing or incurred at or before the passing of this Act or subsequently.

(4) The Second Schedule to the principal Act is hereby further amended by omitting from clause 8 (as amended
35 by section 9 of the Presbyterian Church Property Act 1885 Amendment Act 1914 and section 3 (2) (a) and (b) of the Presbyterian Church Property Amendment Act 1963) the words “for the purpose of acquiring, developing, or subdividing any land for the purposes of any particular congregation
40 or of building, rebuilding, repairing, altering, or enlarging any building upon the lands at any time vested in them for the purposes of any congregation of the Presbyterian Church, or for paying off any existing debt at any time incurred for

all or any of the purposes aforesaid”, and substituting the words “for any of the purposes of any congregation of the Presbyterian Church”.

(5) The following enactments are hereby consequentially repealed: 5

(a) Section 9 of the Presbyterian Church Property Act 1885 Amendment Act 1914:

(b) Paragraphs (a) and (b) of subsection (2) of section 3 of the Presbyterian Church Property Amendment Act 1963. 10

10. Power to approve scheme for alternative application of certain funds—(1) This section shall apply to any fund held by the Trustees or any other persons on behalf of any congregation of the Presbyterian Church, being a fund that has been raised, whether before or after the passing of this Act, for any special object or purpose connected with or relating to the congregation, by way of voluntary contributions, or by the sale of goods voluntarily contributed, or as the price of admission to any entertainment, or in any other manner of voluntary contribution, whether or not the money in the fund has been invested pending its application for that object or purpose. 15 20

(2) If it becomes or has become impossible or impracticable or inexpedient to carry out that object or purpose, or the amount available is inadequate to carry it out, or the object or purpose has been effected already, the Trustees, at the request of the congregation, signified by a resolution of the congregation, and with the consent of the Presbytery of the bounds, may by writing approve any scheme for the application or disposal of the fund for some other purpose related to the said congregation. 25 30

(3) Every scheme so approved shall have effect according to its tenor.

(4) This section shall not apply to any fund in respect of which, before or after the passing of this Act, a scheme has been approved by the Court or the Attorney-General under Part III or Part IV of the Charitable Trusts Act 1957, or in respect of which an application for the approval of a scheme has been or is made to the Court or the Attorney-General under either of those Parts. 35 40

11. Power to act together with other persons—In the exercise of their powers the Trustees may join with or act in combination or association with any other persons or bodies of persons in doing any act or thing which in the
5 opinion of the Trustees will be for the benefit of any trust administered by them.

12. Trustees not a moneylender—It is hereby declared that the Trustees are not a moneylender within the meaning of any of the provisions of the Moneylenders Act 1908.

10 **13. Costs of Act**—All costs, charges, disbursements, and expenses of and incidental to the preparation, obtaining, and passing of this Act or otherwise in relation to it shall be paid from the Investment Fund Income Account established
15 under section 3 (6) of the Presbyterian Church Property Trustees Empowering Act 1957.

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