

10 March 2023

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: St Peter's Parish Endowment Fund Trust Bill

1. We have considered whether the St Peter's Parish Endowment Fund Trust Bill (the Bill), a private Bill in the name of Hon Grant Robertson is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. The St Peter's (Wellington) Endowment Fund Trust Board (the Trust Board) was established by a declaration of trust dated 8 August 1922 (the trust deed). The Trust Board has invested funds that are held for the charitable purposes of the Trust Board to benefit the parish of St Peter's in Wellington.
3. The Trust Board is, however, limited in its ability to distribute income from investing the funds effectively for the intended charitable purposes because the trust deed restricts the size of distributions. The Trust Board wishes to amend the trust deed to resolve this and make other amendments.
4. The Bill will:
 - a. enable the Trust Board to make distributions that are not restricted to the amount of income earned in the year preceding the year of distribution;
 - b. provide for a limitation on the liability of the members of the Trust Board;
 - c. update and modernise the governance and administration arrangements;
 - d. provide for any future amendments to the trust deed to be made under the Charitable Trusts Act 1957 or the Anglican Church Trusts Act 1981, and;
 - e. repeal the St Peter's Parish Endowment Fund Act 1927.
5. Section 3 of the Bill of Rights Act states that the Bill of Rights applies only to acts done:
 - a. by the legislative, executive, or judicial branches of the Government of New Zealand; or
 - b. by any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.
6. The Trust Board is not part of the legislative, executive, or judicial branches of the government. We have considered whether the Bill includes any functions or powers that fall within the scope of section 3(b) of the Bill of Rights Act.

7. In *Ransfield v The Radio Network Ltd*¹ the High Court held that a decision about whether an entity is performing a public function, power or duty under section 3(b) of the Bill of Rights Act will be fact dependent, while noting that “a private organisation (whether or not it is providing services to the public) is entitled to manage its business as it sees fit. Unless it is exercising public functions, powers or duties...in terms of s 3(b), the only constraints upon its freedoms are those imposed by general law”.²
8. We do not consider that the Trust undertakes public functions, powers or duties, as its work is essentially of a private character rather than governmental in nature.³ Consequently, the Bill’s proposed changes to the Trust’s objects, powers, and governance arrangements do not engage any rights or freedoms affirmed in the Bill of Rights Act.
9. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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¹ [2005] 1 NZLR 233 (HC).

² *Ibid* at [70].

³ *Ransfield v Radio Network Ltd* [2005] 1 NZLR 233 (HC) at [69(f)], endorsed in *Low Volume Vehicle Technical Assoc Inc v Brett* [2019] NZCA 67 at [25].