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# Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill

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Report of the Social Services and Community Committee

March 2022

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# Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill

## Recommendation

The Social Services and Community Committee has examined the Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill and recommends that this bill not proceed.

## Introduction

The Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill is a private bill that seeks to amend the Girl Guides Association (New Zealand Branch) Incorporation Act 1942. The member in charge of the bill is Dr Duncan Webb and the promoter of the bill is the Girl Guides Association New Zealand Incorporated (GGANZ).

## Examination of private bills

Private bills are promoted by a person, or body of persons, for the particular interest or benefit of that person. Under Standing Order 262, every private bill must contain a preamble setting out the facts on which the bill is founded and the circumstances that make the bill necessary. If the objects of the bill can be achieved without legislation, the preamble must state why legislation is preferred.<sup>1</sup>

There are some differences in a committee's examination between a private bill and other types of bills. When examining a private bill, Standing Order 299(2) requires us to determine whether or not the statements in the preamble have been proved to our satisfaction.

The Standing Orders also require the promoter of a private bill to give written notice of their intention to introduce a bill before doing so.<sup>2</sup> When considering amendments to a private bill, we are prevented by Standing Order 310(3) from amending the bill in a way that is outside the scope of the notice of intention to introduce the bill.

## About the Girl Guides Association New Zealand Incorporated

GGANZ is a charitable organisation with a mission to enable girls and young women to develop into confident and resilient individuals who reach their full potential. It aims to do this by providing girls with a wide range of experiences and opportunities.

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<sup>1</sup> [The preamble for this bill can be read in Appendix B.](#)

<sup>2</sup> [The notice of intention for this bill can be read in Appendix C.](#)

Guiding began in New Zealand in 1908. We heard that it was most popular between the 1960s and 1980s and that membership has since declined, although GGANZ is now experiencing membership growth again.

GGANZ explained to us that the nature of Guiding has changed considerably over the last 30 years. GGANZ has had to make a number of changes to the way it operates in order to stay relevant.

## **The Girl Guides Association (New Zealand Branch) Incorporation Act 1942**

The Girl Guides Association (New Zealand Branch) Incorporation Act 1942 established the New Zealand branch of the Girl Guides Association as a separate legal entity from the Girl Guides Association in Great Britain. This Act made the Girl Guides Association New Zealand Incorporated (GGANZ) a body corporate and empowered it to hold property acquired in its own name.

Section 7 of the Act sets out that sections 13 to 18 of the Incorporated Societies Act 1908 apply to GGANZ. These sections deal with the practical operation of incorporated societies.

### **Section 6 of the principal Act**

Section 6 of the Girl Guides Association (New Zealand Branch) Incorporation Act provides that any property or assets held by the New Zealand Branch of the Girl Guides, or held on trust for them, can be transferred to the GGANZ.<sup>3</sup> However, any property or assets transferred to GGANZ that are held on trust remain bound by the conditions of the trust. This means that GGANZ is required to deal with the property or assets in the same way that the trustees had been required to.

### **About the bill as introduced**

The preamble of the bill explains that some of GGANZ's properties have become uneconomic to hold and no longer meet the needs of the Association or that of its members.

It states that the purpose of the bill is to clarify GGANZ's power to sell, transfer, or otherwise dispose of property transferred to it under section 6 of the principal Act or otherwise. At present GGANZ is bound by the conditions of any trust transferred under section 6. Clause 4(4) of the bill would allow GGANZ to dispose of property even if the terms of the trust do not permit it to do so. The effect of this amendment would be that, if the terms of any trust include a prohibition on sale, that part of the terms could be cancelled.

In particular, GGANZ wishes to sell a property known as Otimai in west Auckland that was transferred to GGANZ under section 6 of the principal Act. GGANZ considers that Otimai is the only property currently in its property portfolio that would be affected by the bill. We discuss the property in more detail later in this report.

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<sup>3</sup> [You can read section 6 of the principal Act here.](#)

Properties that were not transferred to GGANZ under section 6 of the principal Act would not be affected by this bill.

## **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We received advice from the Office of the Clerk which raised a number of issues and recommended that various matters be investigated further.

We have gone into detail about three of these matters in this report. The advice we received, which discusses other issues that we investigated, will be publicly available on the Parliament website once the bill has been reported back to the House.

## **GGANZ's property portfolio**

GGANZ has a large and varied property portfolio. These properties consist of owned buildings and land, owned buildings on leased land, properties owned jointly with SCOUTS NZ, and leased properties.

### **Financial impact of property ownership**

We heard that a number of GGANZ's properties are in poor or average condition and require significant maintenance work. We were told that the cost of maintaining GGANZ's property portfolio is not financially sustainable for a not-for-profit organisation.

GGANZ has operated at a deficit since 2016. We heard that the total value of the deficits from 2016 to 2020 was -\$8,755,000. GGANZ said that 42.5 percent of this deficit was attributable to property (-\$3,721,000) and the balance (-\$5,034,000) was the result of strategic expenditure to grow Girl Guiding.

GGANZ spent \$741,779 on costs associated with property ownership in 2020. We heard that the organisation does not have enough cash reserves to sustain this current level of expenditure on its properties beyond 2024. GGANZ noted that the expenditure is solely to undertake urgent remedial, health and safety, and compliance works.

### **Property utilisation**

We heard that many GGANZ properties are used infrequently. GGANZ attributed this to decreased membership numbers, changes in building requirements, and different expectations of the modern Guiding programme. It said that utilisation of significant properties ranged between 0.1 percent and 6.8 percent in 2019 and 0.1 percent and 4.7 percent in 2020.

GGANZ explained that decreasing use of these properties is not because its members are camping less, but because members use a wide range of locations that are not GGANZ properties.

## Decision to rationalise GGANZ's property portfolio

In 2019 GGANZ decided that, to manage the costs of its property portfolio, it needed to accelerate property sales or introduce an additional fee to cover costs directly attributable to property ownership. This fee was estimated to be \$186.00 per girl per year.

Members of the National Forum were asked to vote on the proposals.<sup>4</sup> Out of 52 members, 51 voted in favour of disposing of property without further consultation. The intention was that the majority of properties would be sold in the next three to five years.

GGANZ acknowledged that a small group of former members of GGANZ are strongly opposed to property sales. We received submissions from some of these former members.

## The Otimai property

We understand that the Otimai property is the only property currently in GGANZ's portfolio that would be affected by the bill.<sup>5</sup>

Otimai is a large property in west Auckland made up of seven different land titles. It originally comprised two titles purchased by Lucinda and Bertha Wilson. In 1929 these titles were transferred to a trust with the intention that the property be used as a training home for girl guides. In 1944 the titles were transferred to GGANZ by the trustees under section 6 of the principal Act. Five additional titles were purchased by GGANZ between 1946 and 1980 and make up the rest of the property. Only the titles purchased by the Wilsons are bound by the conditions of the trust.

In 1979 GGANZ built the lodge that is currently at Otimai. Part of Otimai, including the lodge, has been leased to Kiwi Can Do since 2017.<sup>6</sup> We heard that the current lease ends in 2022 and GGANZ does not intend to renew it. Kiwi Can Do has expressed interest in purchasing the property.

We heard that, when the lease ends in 2022, maintenance work will be needed. Because of this it is forecast that Otimai will make a minimum loss of \$30,000 in 2022 and \$57,000 in 2023.

## The Otimai trust deed

Bertha and Lucinda Wilson were the settlors of the trust deed for Otimai. The deed appointed them, and Lucinda's husband William, as trustees. The beneficiaries of the trust were the New Zealand branch of the Girl Guides.<sup>7</sup>

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<sup>4</sup> The National Forum is Guiding's governing body. It also oversees the affairs of GGANZ. Forum members hold their position due to being an office holder of a voluntary organisation, or an elected representative of a region or specific group within a region. In 2016, Forum membership was extended to include girl members.

<sup>5</sup> [A breakdown of GGANZ's property portfolio is included in the evidence, "Girl Guides Association New Zealand Incorporated Supp 4".](#)

<sup>6</sup> Kiwi Can Do provides free courses to New Zealanders on Jobseeker Support to help them get jobs in the civil industry sector, such as traffic control or truck driver licensing.

<sup>7</sup> [The Otimai trust deed can be read here.](#)

## **Inconsistency between clause 1 and clauses 6 and 7A**

Clause 1 of the deed sets out the trust's purpose: that Otimai is to be used and enjoyed by Girl Guides in perpetuity. However, clause 6 empowers the trustees to sell Otimai at any time, and in any manner, on such terms as the Dominion Executive (now GGANZ) thinks fit. Similarly, clause 7A provides that the trustees' responsibility for the proceeds of the sale ceases when the proceeds of the sale are paid to GGANZ.

Clause 6 and 7A of the trust deed appear to be inconsistent with the trust purpose of holding Otimai in perpetuity.

We received a submission from Crown Law which stated that the involvement of either Parliament or the Court is necessary in order to approve the sale of Otimai. It submitted that, without such intervention, GGANZ would risk breaching the terms of the trust deed.

## **Varying the terms of the Otimai trust**

Crown Law's submission outlined that two avenues are available to GGANZ to vary the terms of the Otimai trust. The two avenues are applying to the High Court to vary the terms of the trust under Part 3 of the Charitable Trusts Act 1957 or amending the principal Act by way of a private bill.

If GGANZ chose to go to court it would need to apply to the High Court for a variation of trust and submit a scheme describing the proposed variation. The Attorney-General, through the Crown Law Office, would then be required to prepare a report on the proposed variation which would be filed in court. The variation would then be publicly advertised under section 36 of the Charitable Trusts Act 1957 so that interested or affected parties could make submissions to the court. The High Court would then consider whether a departure from the terms of the trust meets the requirement in the Charitable Trusts Act.

Crown Law submitted that section 6 of the principal Act does not alter the High Court's jurisdiction to approve an application to vary the terms of a trust over a property transferred to GGANZ under section 6. We were told that section 6 requires GGANZ to "execute and perform any trust or conditions affecting" assets transferred to it. Crown Law said that, in the event that a variation was approved, the trust conditions affecting the property would become the varied terms that the Court approved.

## **Response from GGANZ**

GGANZ said it had considered applying to the High Court to vary the terms of the Otimai trust. However, it had concluded that this would be insufficient because the inconsistency would remain between section 4 of the principal Act (to promote the welfare of the New Zealand branch of Girl Guides) and section 6 (to execute and perform any trust or conditions affecting assets transferred under section 6). This means the issue would arise again if any future properties were transferred to GGANZ that have restrictive conditions such as the requirement to hold property in perpetuity. It considers that the problem is caused by legislation and should therefore be remedied by legislation.

We asked why GGANZ should not go to court each time it wants to vary a trust. GGANZ responded that going to court would not fully resolve the issue in respect of Otimai because

the trust would still apply over the proceeds from Otimai's sale, so they could not be used for GGANZ's general purposes. It noted again that going to court each time it sought to vary a trust would not resolve the conflict between sections 4 and 6 of the principal Act.

We heard that GGANZ has received a range of legal advice about the options available to it, and that this advice has been inconsistent. GGANZ said that, overwhelmingly, the advice it had received was of the view that the Act itself needs to be amended. GGANZ noted that, depending on which previous court ruling one looked at, the court might not give GGANZ the ruling it needs.

### **Submission from the Wilson family**

We received a submission from Susan Blathwayt, James Wilson, Jane Williams, and the late William Wilson. Susan, James, and Jane are the grandchildren of Lucinda and William Wilson. The Wilson family noted that the Otimai property was gifted to GGANZ to be used and enjoyed in perpetuity. They consider that selling the property to raise funds goes against this intention and are concerned that selling the property will damage their grandmother's legacy.

The Wilson family requested that the bill be amended so that significant assets gifted to GGANZ are only able to be sold subject to the written consent of the donor or their surviving family. The Wilson family said they maintain an interest in the Otimai property and would like to be consulted on any change of ownership.

When asked what consultation has been undertaken with the Wilson family, GGANZ informed us of the following contact:

- A telephone conversation was held in early May 2021 where Otimai and the bill were discussed. In this conversation the Wilson family expressed concern about how Lucinda Wilson's legacy and contribution to Guiding would continue if Otimai was sold.
- The Wilson family was contacted by email on 15 November 2021 with an update on the progress of the bill and to inform the Wilson family about GGANZ's upcoming oral submission.
- As at 13 December 2021 GGANZ was awaiting further feedback from the Wilson family in writing. We were told that a discussion would be organised once this feedback was received.

### **Determination of whether the statements in the preamble have been proved to the satisfaction of the committee**

Standing Order 299 requires us to determine whether the statements in the preamble have been proved to our satisfaction.

The preamble of the bill states that "the objects of this Act cannot be achieved without legislation". Therefore, a key question for us to consider has been whether the objects of this bill could be achieved without legislation. While the objects of the bill are stated broadly in the preamble as selling, transferring, and disposing of property despite the terms of a trust, it appears to us that the intention of this bill is specifically to allow GGANZ to sell the property called Otimai. In our view, it is possible that GGANZ could have achieved this objective by

applying to the High Court to vary the trust deed in respect of Otimai under Part 3 of the Charitable Trusts Act 1957.

In our view, the statements in the preamble cannot be proved to our satisfaction, because we consider it open to GGANZ to go to the court and, conceivably, achieve their objects without legislation. It is for this reason that we recommend that the bill not proceed.

We acknowledge that it is not for Parliament to make conclusions about what a court may decide before that process has been exhausted, and that the nature of litigation can be uncertain. However, we consider that GGANZ's first port of call for varying the trust deed in respect of Otimai should be an application to the court. If the court finds that a variation is not permissible under the current legislative framework applying to that trust, it may then be appropriate to seek Parliament's consideration of a legislative solution.

We note that, under Standing Order 268, a bill that is the same in substance as one defeated on first, second, or third reading may not be proposed in the same calendar year. However, this does not prevent this bill, or one of a similar nature, being introduced after that year has expired.

### **Committee comment**

A private bill should not be a mechanism to bypass court processes when they are available. We are also mindful of the procedural precedent that Parliament is reluctant to grant special legislative rights to private persons unless there is a proven necessity. In this case, that necessity has not been made out to our satisfaction.

### **Broad power to dispose of property**

While the impetus for the bill is the desire to sell Otimai, the bill's effect would be wider. It would empower GGANZ to sell any property that it holds on trust even where the terms of that trust would otherwise prohibit the property's sale.

GGANZ has stated that the bill would not affect any other property it currently holds. However, the bill would enable GGANZ to override the terms of a trust which prevent the sale of any future property it may acquire. Such a sale would not require intervention by Parliament or the approval of the High Court.

Crown Law submitted that this would be a "significant dispensation" from the obligations imposed by the Charitable Trusts Act.<sup>8</sup> It considered that there is insufficient justification for such a broad exemption from the charitable trust principles that usually apply. Crown Law recommended that the bill be amended to permit the sale of the Otimai property only if the committee concluded that the sale of Otimai was appropriate.

### **Response from GGANZ**

We asked GGANZ whether clause 4 of the bill should be confined to the disposal of the Otimai property. GGANZ responded that the bill should not be limited to Otimai because the Act has general applicability, so the bill should also have general applicability. GGANZ said

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<sup>8</sup> Crown Law, Submission dated 28 May 2021, para 28.

that it did not consider it necessary for any additional safeguards to be put on the power to dispose of property in the bill because of the 2019 National Forum decision to proceed with disposal of property. It also noted that it has internal processes that it carries out before disposing of property.

We asked whether it was appropriate that properties held on trust by GGANZ in the future could be disposed of if the bill were enacted. GGANZ acknowledged that scrutiny and oversight is required to vary or cancel terms of specific trust deeds. It noted that it does not intend to acquire further properties with similar restrictive conditions. Given this answer, we asked why an amendment to the Act to deal with equivalent future situations is necessary. GGANZ said that, while the current board does not intend to acquire property with restrictive conditions, it cannot foresee what the organisation may do in decades to come or anticipate any future bequests, gifts, or transactions. It maintained that, for this reason, the conflict between section 4 and section 6 of the principal Act needs to be remedied.

We asked why such a significant dispensation from the general law for varying the terms of a trust is justified. GGANZ responded that other private Acts provide a process for variations of trusts outside of the court. An example is the Roman Catholic Bishops Empowering Act 1997 and the Methodist Church of New Zealand Trusts Act 1957. GGANZ said that these private Acts included provisions for variation of trusts because the process under the Charitable Trusts Act is cumbersome and expensive. It noted that the Law Commission has been asked to review the Charitable Trusts Act but this has not happened yet.

### **Committee comment**

Given our decision that the statements in the preamble could not be proved to our satisfaction, it is not necessary for us to come to a conclusion about whether the power in clause 4 is too broad. However, this question formed a significant part of our consideration so we discuss it for completeness.

### **Are clauses 4(3) and 4(4) sufficient to release GGANZ from the obligations imposed by the Otimai trust deed?**

Clauses 4(3) and 4(4) of the bill would empower GGANZ to dispose of property even if the trust terms would not permit the disposition of property. However, as introduced, the bill would not release GGANZ from other obligations imposed by these trust deeds. Thus, any constraints that a trust imposes would continue to apply to the power to dispose of property in the bill. In the Otimai example this would mean that the terms of the trust would continue to apply to the proceeds of the sale of Otimai.

We asked GGANZ whether they believed the bill should be amended in light of this. In response, GGANZ requested the following amendment to clause 4(4) (the underlined wording is added):

Despite section 6 and any trust that it recognises, this section applies even if the trust terms would not, without this section, permit the disposition of property. Upon the disposition of property any such proceeds shall be held for the general purposes of the Association and any Trust or conditions affecting such property shall be cancelled.

We asked whether it would be appropriate to cancel the terms of a trust in this way. GGANZ responded that the suggested amendment would ensure that future sale proceeds could be used for its general charitable purposes as outlined in its constitution.

Standing Order 300(4) states that no amendment may be made to a private bill that is outside the scope of the notice of intention. GGANZ considered that the amendment was within the notice of intention because the objects set out in the notice are broad.

### **Committee comment**

We did not form a view on whether it was appropriate to make the requested amendment. However, we wish to note our concern that the requested amendment may not be within the bill's notice of intention. The proposed amendment appears targeted at cancelling terms of trust, whereas the preamble is focused on enabling GGANZ to undertake certain actions, including sale of land, regardless of the terms of trust.

We wish to draw this to the attention of GGANZ for its consideration should it eventuate that this bill, or one of a similar nature, is considered by Parliament in the future.

### **Acknowledgement**

We wish to express our appreciation for the support Girl Guides provides to girls and young women in New Zealand.

We take note of its comment that the nature of Guiding has changed considerably since the Otimai property was gifted to GGANZ in 1929. We recognise that this is a difficult situation for GGANZ and acknowledge its comments about the expense of going to court and maintaining the Otimai property.

We thank GGANZ for its engagement with us during our consideration of this bill.

## **Appendix A—Committee procedure**

### **Committee procedure**

The Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill was referred to the committee on 10 March 2021. The closing date for submissions was 28 April 2021. We received and considered 46 submissions from interested groups and individuals. We heard oral evidence from the Girl Guides Association New Zealand Incorporated on 17 November 2021.

We received advice on the bill from the Ministry of Business, Innovation and Employment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

### **Committee members**

Angie Warren-Clark (Chairperson)  
Glen Bennett  
Karen Chhour  
Dr Emily Henderson  
Anahila Kanongata'a-Suisuiki  
Ricardo Menéndez March  
Terisa Ngobi  
Maureen Pugh  
Hon Louise Upston

### **Advice and evidence received**

The documents that we received as advice and evidence are available on the Parliament website, [www.parliament.nz](http://www.parliament.nz).

## Appendix B—Preamble

### Preamble

1. The Girl Guides Association New Zealand Incorporated (the **Association**) was incorporated under the Girl Guides Association (New Zealand Branch) Incorporation Act 1942 for the purposes of promoting special training and instruction of girls in the principles of discipline, loyalty, and good citizenship in New Zealand:
2. Some of the Association's long-held properties have become uneconomic to hold, given the Association's financial circumstances, and no longer meet the needs of the Association or its members:
3. The Association wishes to clarify that it can sell, transfer, and otherwise dispose of property that is held subject to statutory trusts recognised under the principal Act, even if such a disposition would otherwise be inconsistent with the terms of such trusts:
4. The objects of this Act cannot be achieved without legislation:

## **Appendix C—Notice of Intention**

### **Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill Notice of Intention to Promote a Private Bill**

Notice is given under Appendix C of the Standing Orders of the House of Representatives that the Girl Guides Association New Zealand Incorporated (“the Association”) incorporated under the Girl Guides Association (New Zealand Branch) Incorporation Act 1942, gives notice that it intends to promote a Private Bill into Parliament called the Girl Guides Association (New Zealand Branch) Incorporation Amendment Bill.

The objects of the Bill are to:

Confirm the powers of the Association to do all things necessary or desirable for ensuring the welfare of the New Zealand Branch, including the disposition of property on terms that may be inconsistent with the requirements of section 6 of the Girl Guides Association (New Zealand Branch) Incorporation Act 1942.

Communication or notices for the promoter of the Bill can be sent to Angela Reeve, Property & Legal Advisor, Email: [angela.reeve@ggnz.org.nz](mailto:angela.reeve@ggnz.org.nz) Phone: 021 914 721 or by Post: PO Box 13143 Christchurch 8141.

A copy of the Bill may be inspected during office hours at the Girl Guiding New Zealand Christchurch Office at 5 Sir William Pickering Drive, Burnside, Christchurch from 1 December until 22 December 2020.

A copy of the Bill may be viewed online at: <https://girlguidingnz.org.nz/about-us/privatemembers-bill/>