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Gray v Australian Cancer Foundation for Medical Research and others; Estate Harold Boardman. This case concerned a bequest of some AUD 3 million to "The Cancer Research Foundation". Following the death of the testator, no such foundation was found to exist. On the application of the executor of the estate for advice, the court advised initially that the executor should commence court proceedings, and make inquiries as to possible next of kin or charities that might be claimants or beneficiaries under a *cy-pres* scheme. The executor sought to identify possible charity beneficiaries by means of an advertisement in a national daily newspaper and a national medical journal, and by writing to four cancer organizations. Following these actions, the claims of three cancer organizations were brought to the notice of the court. On 11 May 1999 the Supreme Court of the state of New South Wales held that, since the testator had shown a general charitable intent and that the purpose of the testator's gift was to benefit a grant-making general cancer research body, it was appropriate to order a *cy-pres* scheme under section 13(2) Charitable Trusts Act 1993 dividing the gift equally between the three cancer bodies that had been identified. Subsequently, two other cancer charities applied for a variation of the order to add them as beneficiaries of the scheme on the grounds that there had been inadequate advertising of the scheme. Neither of the two applicant charities had seen the advertisements and maintained that their interests as claimants would have been discovered if the executor had researched the cancer charity sector more diligently. The judge observed that the court would not countenance substantial expenditure on advertising that would diminish the funds available for charity, and that the advertisements placed by the executor should have been sufficient to come to the attention of interested charities. However, the key question was not whether this was the case but whether, if it had been the case, the testator's charitable purpose would have been better carried out. On the evidence before the court, which showed that both the applicants were engaged in specialized cancer research and suggested that a further division of the gift would reduce the effectiveness of the beneficiaries' grant programs (because cancer research is so expensive that smaller grants are of negligible benefit), the court was satisfied that the original order should stand. Furthermore, the Attorney General, who represented charities generally, submitted that the scheme should not be altered, and section 11 of the Charitable Trusts Act 1993 had not altered the common law rule that any application to alter a *cy-pres* scheme must be made with his consent (applying A-G v Stewart (1872) LR 14 Eq 17).

(*Gray v Australian Cancer Foundation for Medical Research and others; Estate Harold Boardman (No 2), New South Wales Supreme Court, [1999] NSWSC 725, 8 July 1999*). PB