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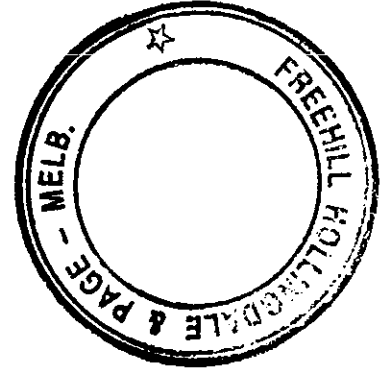
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Queensland



TRUSTS ACT 1973

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Reprint No. 1

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the Parliamentary Counsel and printed by
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PART 8—CHARITIES

Meaning of charity

103.(1) The repeal by this Act of the statute 43 Elizabeth Chapter 4 (Charitable Uses Act, 1601), shall not affect the established rules of law relating to charity.

(2) Notwithstanding any rule of law to the contrary, it shall be and be deemed always to have been charitable to provide, or to assist in the provision of, facilities for recreation or other leisuretime occupation, if the facilities are provided in the interests of social welfare.

(3) The requirement of subsection (2) that the facilities are provided in the interests of social welfare shall not be satisfied unless—

- (a) the facilities are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended; and
- (b) either—
 - (i) those persons have need of such facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or^a
 - (ii) the facilities are to be available to the members or to the male members or to the female members of the public at large.

(4) Nothing in this section shall be taken to derogate from the principle that, in order to be charitable, a gift, trust or institution must be for the public benefit.

Inclusion of non-charitable purpose not to invalidate trust

104.(1) No trust shall be held to be invalid by reason that some non-charitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust property or funds or any part thereof is by such trust directed or allowed.

(2) Any such trust shall be construed and given effect in the same manner in all respects as if no application of the trust property or funds or

of any part thereof to or for any such non-charitable and invalid purpose had been or should be deemed to have been so directed or allowed.

(3) This section shall not apply to any trust declared before, or to the will of any testator dying before, the commencement of this Act.

Occasions for applying property cy pres

105.(1) Subject to subsection (2), the circumstances in which the original purposes of a charitable trust can be altered to allow the property given or part of it to be applied cy pres shall be as follows—

- (a) where the original purposes, in whole or in part—
 - (i) have been as far as may be fulfilled; or
 - (ii) can not be carried out; or
 - (iii) can not be carried out according to the directions given and to the spirit of the trust;
- (b) where the original purposes provide a use for part only of the property available by virtue of the trust;
- (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the trust, be made applicable to common purposes;
- (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the trust, or to be practical in administering the trust;
- (e) where the original purposes, in whole or in part, have, since they were laid down—
 - (i) been adequately provided for by other means; or
 - (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust,

regard being had to the spirit of the trust.

(2) Subsection (1) shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied *cy pres*, except in so far as those conditions require a failure of the original purposes.

(3) References in subsections (1) and (2) to the original purposes of a trust shall be construed, where the application of the property given has been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being applicable.

(4) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied *cy pres*, to secure its effective use for charity by taking steps to enable it to be so applied.

(5) Nothing in this section shall affect the application of the provisions of the *Charitable Funds Act 1958* to the funds to which that Act applies.

Proceedings in case of charitable trust

106.(1) The Court may upon application under this section by an order in respect of any charitable trust—

- (a) give directions in respect of the administration of the trust; and
- (b) require any trustee to carry out the trust, or to comply with a scheme (if any); and
- (c) require any trustee to satisfy the trustee's liability for any breach of the trust.

(2) An application under this section may be made—

- (a) by the Attorney-General or person authorised by the Attorney-General; and
- (b) by the charity, or any trustee of the trust; and
- (c) by any person interested in the due administration of the trust.

(3) Notice of the application shall be given to the Attorney-General, and to the trustee of the trust and to such other person as the Court directs.

(4) On any such application the Court may make such order as to costs and otherwise as may be just.

(5) In this section—

“**charitable trust**” means any property held in trust for a charitable purpose;

“**charity**” means any institution, whether or not incorporated, which is established for charitable purposes.

PART 9—MISCELLANEOUS

Application of Part

107. Except where otherwise provided in this Part, the provisions of this Part shall apply whether or not a contrary intention is expressed in the instrument creating the trust.

Indemnity

108. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all persons for any acts done pursuant thereto; and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court had jurisdiction to make the same.

Remedies for wrongful distribution of trust property

109.(1) In any case where a trustee has wrongfully distributed trust property any person who has suffered loss by that distribution may enforce the same remedies against the trustee and against any person to whom the distribution has been made as in the case where a personal representative has wrongfully distributed the estate of a deceased person.

(2) Except by leave of the Court, no person who has suffered loss by reason of the wrongful distribution of trust property or of the estate of a deceased person may enforce any remedy against any person to whom such property or estate has been wrongfully distributed until the person has first exhausted all remedies which may be available to the person against the trustee or personal representative.