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SOUTH AUSTRALIA



TRUSTEE ACT 1936

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 July 1995.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

PART 4
CHARITABLE TRUSTS PROCEDURE

In cases of breach of trust, etc., petition may be presented to Supreme Court

60. In every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of the Supreme Court shall be deemed necessary for the administration or management or to the advantage or benefit of any trust created for charitable purposes, it shall be lawful for—

- (a) any two or more natural persons who are objects of such trust; or
- (b) the trustees appointed by or in pursuance of the instrument or of the Act of Parliament creating the trust; or
- (c) the Attorney-General:

to present a petition to the Supreme Court, stating such breach or supposed breach, or the grounds upon which such direction or order is necessary, as the case may be, and praying such relief as the nature of the case may require.

Petition to be accompanied by affidavit

61. Every petition shall be accompanied by an affidavit made by one of the persons presenting the petition or any other person who can swear positively to the facts, verifying the petition and the grounds on which the proposed relief is sought.

Petition to be heard in open court

62. Every petition shall be heard in open court.

Evidence may be brought by affidavit or otherwise

63. (1) Any petitioner or other person appearing at the hearing of the petition may bring before the court evidence by affidavit, or, if the court so directs, oral evidence, and the court may call upon any petitioner or other person appearing at the hearing of the petition to prove before it, by affidavit or otherwise, as the court directs, such matters as the court thinks fit.

(2) The attendance of any witness or the production of any document for the purposes of this section may be enforced by *subpoena* issued at the instance of the person requiring such attendance or production.

Service of petition and copy of affidavit

64. The petition, together with a copy of the accompanying affidavit, shall be served upon the Attorney-General where the petition is presented by some person other than the Attorney-General, and upon such other persons as the court may direct.

Attorney-General may address court at hearing

65. The Attorney-General may appear and address the court, either personally or by counsel, at the hearing of the petition.

With Judge's consent any person may address court

66. With the leave of the court, any person interested who has not been served with the petition may appear and address the court on the hearing of the petition, but shall not be allowed costs out of the trust funds unless the court so directs.

Powers of court in dealing with petition

67. The court may make such order upon the petition as to it seems just, or may refuse to make any order, or may direct that the right to the relief sought be determined in an action to be brought for that purpose.

Court may order costs

68. The court may make such order as to costs as to the court may seem just, and may order any petitioner to pay the taxed costs of any person appearing at the hearing in pursuance of section 66.

Powers of Supreme Court may be exercised by a single Judge

69. The authority and jurisdiction by this Act vested in the Supreme Court may, subject to any rules or orders of that court in relation thereto, be exercised by a single judge of such court.

Inclusion of non-charitable and invalid purposes not to invalidate a trust

69A. (1) Where the purposes for which property is required or permitted to be applied in pursuance of a trust (whether constituted before or after the enactment of this section) are partly charitable, and partly non-charitable and invalid, the trust shall not be held to be invalid, but shall be construed as if no provision had been made requiring or permitting the application of property for purposes that are non-charitable and invalid.

(2) This section does not apply to any trust declared by the will of any testator dying before, or to any other trust declared before, the enactment of this section, if before the enactment of this section—

- (a) the trust has been declared to be invalid by any order or judgment made or given in legal proceedings; or
- (b) property subject to the trust or income therefrom has been paid or conveyed to, or applied for the benefit of, or set apart for, the persons entitled to that property or income by reason of the invalidity of the trust.

Application of trust property *cy-pres*

69B. (1) The purposes for which property is required or permitted to be applied in pursuance of a charitable trust may be altered by a scheme approved under this section in any of the following circumstances:—

- (a) where the original purposes, in whole or in part—
 - (i) have been as far as possible fulfilled; or
 - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
- (b) where the original purposes provide a use for part only of the trust property; or
- (c) where the trust property could be more effectively used if combined with other property applicable for similar purposes and administered jointly with that property; or
- (d) where it is not reasonably practicable having regard to—
 - (i) the value of the trust property; or

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- (ii) changes in circumstances that have taken place since the constitution of the trust; or
 - (iii) any other relevant factor,
- to apply the trust property in accordance with the original purposes; or
- (e) where the original purposes, in whole or in part—
- (i) have been adequately provided for by other means; or
 - (ii) have ceased to be charitable purposes; or
 - (iii) have ceased to provide a suitable and effective method of using the trust property.

(2) References in this section to the original purposes of a charitable trust shall be construed, where the purposes for which the trust property is required or permitted to be applied have been altered or regulated by a scheme or otherwise, as referring to the purposes for which the property is for the time being required or permitted to be applied.

(3) Where circumstances exist justifying the alteration of the purposes for which property may be applied in pursuance of a charitable trust, the trustee may apply to the Supreme Court for approval of a scheme altering the purposes for which property is required or permitted to be applied in pursuance of the trust.

(4) The trustee shall cause notice of an application under this section to be given in accordance with the directions of the Supreme Court.

(5) Upon approval of a scheme altering the purposes for which property is required or permitted to be applied in pursuance of a charitable trust, those purposes shall be altered in accordance with the approved scheme.

(6) A scheme shall not be approved under this section unless in the opinion of the Supreme Court the scheme accords as far as reasonably practicable with the spirit of the original gift.

Recreational charities

69C. (1) Any trust (whether constituted before or after the enactment of this section) to provide, or assist in the provision of, recreational facilities for the public benefit is a charitable trust.

(2) This section does not apply to recreational facilities unless—

(a) the facilities are provided with the object of improving the conditions of life of the persons for whom they are primarily intended; and

(b) either—

- (i) those persons have need of those facilities by reason of their youth, age, infirmity or disablement, poverty or social and economic circumstances; or
- (ii) the facilities are to be available to the general public, or a substantial section of the general public.