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## Charitable Trusts Act 1962

An Act to amend the Law relating to Charitable Trusts.

*[Assented to 6 December 1962]*

Be it enacted —

### Part I — Preliminary

#### 1. Short title

This Act may be cited as the *Charitable Trusts Act 1962*.

*[2. Repealed by No. 10 of 1998 s.76.]*

#### 3. This Act to bind Crown

This Act binds the Crown.

#### 4. Interpretation

In this Act, unless the context otherwise requires, —

**“charitable purpose”** means every purpose that in accordance with the law of Western Australia is charitable;

**“Court”** means the Supreme Court of Western Australia or a judge thereof;

**“Principal Registrar of the Supreme Court”** means the person for the time being holding or acting in the office designated under the *Supreme Court Act 1935*, by that name;

**“property”** means real and personal property of every kind, and includes money.

### Part II — Recreational Charities

#### 5. General provisions as to recreational and similar trusts, etc.

(1) Subject to the provision of this Part, it is, and shall be deemed always to have been, charitable to provide, or to assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare.

(2) The requirement of subsection (1) of this section that the facilities be provided in the interests of social welfare is not 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 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 members, or to male or female members, of the public at large.

(3) Subject to the requirement of subsection (1) of this section that the facilities be provided in the interests of social welfare, that subsection applies in particular to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.

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

## **6. Savings and provisions as to past transactions**

(1) Nothing in this Part restricts the purposes which are to be regarded as charitable independently of this Part.

(2) Nothing in this Part —

(a) applies to make charitable any trust, or to validate any disposition, of property, if before the commencement of this Act that property, or any property representing or forming part of it, or any income arising therefrom, has been paid or conveyed to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust or disposition;

(b) affects any order or judgment made or given in legal proceedings before the commencement of this Act; or

(c) requires anything properly done before the commencement of this Act, or anything done or to be done in pursuance of a contract entered into before that commencement, to be treated for any purpose as wrongful or ineffectual.

## **Part III — Schemes in respect of Charitable Trusts**

## **7. Property may be disposed of for other charitable purposes**

(1) Subject to the provisions of subsection (3) of this section, where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and —

(a) it is impossible, impracticable or inexpedient to carry out that purpose; or

(b) the amount available is inadequate to carry out that purpose; or

(c) that purpose has been effected already; or

(d) that purpose is illegal or useless or uncertain,

then (whether or not there is any general charitable intention) the property and income, or any part or residue thereof, or the proceeds of sale thereof, shall be disposed of for some other charitable purpose, or a combination of such purposes, in accordance with a scheme approved under this Part.

(2) Subject to the provisions of subsection (3) of this section, where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and the property or income that has accrued or will accrue is more than is necessary for the purpose, then (whether or not there is any general charitable intention) any excess property or income or proceeds of sale may be disposed of for some other charitable purpose, or a combination of such purposes, in accordance with a scheme approved under this Part.

(3) This section shall not operate to cause any property or income to be disposed of as provided in subsection (1) or (2) of this section —

(a) if, in accordance with any rule of law, the intended gift thereof would otherwise lapse or fail and the property or income would not be applicable for any other charitable purpose; or

(b) if, and so far as, the property or income can be disposed of under section sixteen of the *Charitable Collections Act 1946*.

(4) This section extends to cases where the charitable purpose affecting any property or income is defined by a scheme approved by the Court or the Attorney General under this Part or otherwise, and in any such case the original purpose or purposes may be restored, with or without modification.

(5) The provisions of this section apply with respect to trusts created, and to schemes approved, before or after the commencement of this Act.

*[Section 7 amended by No. 7 of 1998 s.4.]*

## **7A. Small trusts may be terminated**

(1) Where —

- (a) any property is given or held upon trust, or is to be applied, for any charitable purpose;
- (b) the value of the property (including any accumulated income) is less than \$15 000 or such greater amount as is prescribed for the purposes of this paragraph; and
- (c) the value of the property is too small, in relation to the charitable purpose, for any useful purpose to be achieved by the expenditure of only the income derived from that property,

then the property may be disposed of for that or another charitable purpose and the trust may be terminated in accordance with a scheme approved under this Part.

(2) This section extends to cases where the charitable purpose affecting any property is defined by a scheme approved under this Part.

(3) The provisions of this section apply with respect to trusts created, and to schemes approved, before or after the commencement of the *Charitable Trusts Amendment Act 1998*.

*[Section 7A inserted by No. 7 of 1998 s.5.]*

#### **7B. Combining property held for similar purposes**

(1) Where —

- (a) any property or income is given or held upon trust, or is to be applied, for any charitable purpose; and
- (b) the charitable purpose could be more effectively carried out if the property and income were combined with other property and income given or held on trust, or to be applied, for a similar purpose,

then the property and income may be combined, and jointly administered and applied, with that other property and income in accordance with a scheme approved under this Part.

(2) This section extends to cases where the charitable purpose affecting any property or income is defined by a scheme approved under this Part.

(3) The provisions of this section apply with respect to trusts created, and to schemes approved, before or after the commencement of the *Charitable Trusts Amendment Act 1998*.

*[Section 7B inserted by No. 7 of 1998 s.5.]*

#### **8. Extension of powers or alteration of mode of administration of trust**

(1) Where any property or income is given or held upon trust, or is to be applied, for any charitable purpose, and the administration of the property or income, or the carrying out of the trust, could be facilitated by extending or varying the powers of the trustees, or by prescribing or varying the mode of administering the trust, the powers of the trustees may be extended or varied, and the mode of administering the trust may be prescribed or varied, in accordance with a scheme approved under this Part.

(2) Nothing in this section restricts the powers that are or may be conferred on the Court or the trustees by, or under any law of the State.

*[Section 8 amended by No. 7 of 1998 s.6.]*

## **9. Trustees may prepare scheme**

(1) Where the trustees of any property or income to which the provisions of this Part apply wish it to be dealt with in accordance with a scheme approved under this Part, the trustees may prepare, or cause to be prepared, a scheme —

(a) if section 7 applies, for the disposition of the property and income;

(b) if section 7A applies, for the disposition of the property and the termination of the trust;

(c) if section 7B applies, for the combining, and joint administration and application, of the property and income; or

(d) if section 8 applies, for the extension or variation of the powers of the trustees, or the prescription or variation of the mode of administering the trust.

(2) Where section 7B applies, the trustees of all of the property and income sought to be combined, and jointly administered and applied, shall jointly prepare, and seek approval for, the scheme.

(3) Where the consideration by the Court or the Attorney General, as the case requires, of 2 or more schemes will involve consideration of substantially similar issues, the trustees of all of the property and income concerned may jointly prepare, and seek approval for, the schemes.

*[Section 9 inserted by No. 7 of 1998 s.7.]*

## **10. Scheme to be laid before Attorney General**

(1) Every scheme prepared under this Part shall be submitted to the Attorney General, together with full information as to all the facts upon which it is proposed to make the disposition set out in the scheme, and with copies of any instruments necessary to explain the scheme so prepared; and, in respect of every such scheme, the Attorney General —

(a) may remit the proposed scheme to the trustees for consideration of any amendments he may suggest; and

(b) shall, subject to section 10A (6) (c), report in writing to the trustees on the scheme as finally submitted by the trustees after they have considered any amendments suggested by the Attorney General.

(1a) The Attorney General may charge the trustees reasonable fees for the costs and expenses (including legal costs and disbursements) incurred by the Attorney General in considering the scheme and preparing a report on it.

(2) At any time after delivery to them of the report of the Attorney General, the trustees may apply to the Court for approval of the scheme, and on making that application shall file therewith the scheme and the report of the Attorney General thereon.

(3) The application, scheme, and report mentioned in subsection (2) of this section shall be open for inspection by the public without any fee or charge.

*[Section 10 amended by No. 7 of 1998 s.8.]*

#### **10A. Attorney General may approve certain schemes**

(1) This section applies to a scheme which relates to property or income which is given or held upon trust, or is to be applied, for any charitable purpose, if —

(a) the value of the property (including any accumulated income) is less than \$50 000, or such greater amount as is prescribed for the purposes of this paragraph; or

(b) the income in the previous financial year was less than \$10 000, or such greater amount as is prescribed for the purposes of this paragraph.

(2) In relation to a scheme or schemes jointly prepared under section 9 (2) or (3), this section applies only if subsection (1) (a) or (b) applies to each of the trusts affected by the scheme or schemes.

(3) Trustees who have prepared a scheme to which this section applies may, when submitting the scheme to the Attorney General under section 10 (1), apply in writing to the Attorney General for approval of the scheme.

(4) If an application is made under subsection (3) the Attorney General shall —

(a) approve the scheme as finally submitted by the trustees after they have considered any amendments suggested by the Attorney General under section 10 (1) (a); or

(b) refuse to approve the scheme.

(5) Before making a decision under subsection (4) the Attorney General —

(a) may require the trustees to give public notice of the scheme in such a manner as the Attorney General thinks fit; and

(b) is to have regard to any representations made to the Attorney General by any person considered by the Attorney General to have an interest in the matter.

(6) If the Attorney General approves a scheme the Attorney General shall —

(a) in writing notify the trustees of the approval;

(b) cause notice of the approval to be published in the Gazette; and

(c) not report on the scheme under section 10 (1) (b).

(7) The approval of a scheme by the Attorney General takes effect at the time it is granted or at such later time as is specified in the approval.

(8) If the Attorney General refuses to approve a scheme —

(a) the Attorney General shall set out the reasons for that decision in the report prepared under section 10 (1) (b); and

(b) the trustees may apply to the Court under section 10 (2) for approval of the scheme.

(9) If a scheme is approved under this section the Attorney General may, on the application of the trustees, from time to time vary the scheme.

(10) The Attorney General may approve a scheme even if the procedural requirements of this Part have not been complied with in relation to the scheme.

(11) If an application is made under subsection (3) or (9) the Attorney General may charge the trustees reasonable fees for the costs and expenses (including legal costs and disbursements) incurred by the Attorney General in considering the scheme or variation.

*[Section 10A inserted by No. 7 of 1998 s.9.]*

## **11. Scheme to be advertised**

(1) Before any application mentioned in section ten of this Act is considered by the Court, notice of that application shall be given once in the *Government Gazette*, and once in a daily newspaper circulating in the State, and those notices shall be given not more than three months and not less than one month before the date proposed for the consideration of the scheme by the Court.

(2) Every notice given under subsection (1) of this section shall —

(a) give a brief summary of the scheme;

(b) state the date proposed for the hearing of the application by the Court; and



(c) require any person desiring to oppose the scheme to give written notice of his intention to do so to the Principal Registrar of the Supreme Court, the trustees, and the Attorney General not less than seven clear days before the date proposed for the hearing.

*[Amended by No. 67 of 1979 s.72.]*

## **12. Opposition to scheme**

Any person wishing to oppose a scheme in relation to which an application has been made to the Court under section 10 (2) shall, not less than seven clear days before the date proposed for the hearing of the application by the Court, give written notice of his intention to oppose the scheme to the Principal Registrar of the Supreme Court and the trustees and the Attorney General.

*[Section 12 amended by No. 67 of 1979 s.72; No. 7 of 1998 s.10.]*

## **13. Administration of schemes**

Without limiting the power to make any other provision for carrying out the purposes of a scheme prepared under this Part or for administering any property, income or money to which any such scheme relates, it is hereby declared that a scheme approved under this Part may provide that the purposes of the scheme may, in whole or in part, be carried out, and that any property, income or money to which the scheme relates may be administered, by —

(a) the trustees of any existing trust for any charitable purpose;

(b) any hospital board or the board of trustees of any public hospital under the *Hospitals and Health Services Act 1927*; or

(c) the Public Trustee or any trustees who could be appointed under the *Trustees Act 1962*.

*[Section 13 amended by No. 103 of 1994 s.18.]*

## **14. Expenses of scheme**

(1) A scheme prepared and approved under this Part may provide that all reasonable expenses of and incidental to —

(a) preparing and advertising the scheme; and

(b) obtaining approval for the scheme (including any fees charged under section 10 (1a) or 10A (11)),

shall be paid out of, and be a charge on, the property or income affected.

(2) If a scheme was, or 2 or more schemes were, jointly prepared under section 9 (2) or (3), the scheme or schemes may provide how such expenses are to be apportioned.

*[Section 14 inserted by No. 7 of 1998 s.11.]*

### **15. Jurisdiction of Court in respect of schemes**

Where application for approval of a scheme is made to the Court under this Part, the Court —

- (a) may decide what persons shall be heard before it in support of, or in opposition to, the scheme;
- (b) has jurisdiction and authority to hear and determine all matters relating to the scheme;
- (c) may make an order approving the scheme with or without modification, as it thinks fit; and
- (d) may, on the application of the trustees, from time to time, vary or modify the scheme.

### **16. Approval of scheme or refusal of Court to approve scheme to be gazetted**

Notice of the approval by the Court of a scheme under this Part, or of the refusal of the Court to approve any such scheme, shall be published by the Principal Registrar of the Supreme Court in the *Government Gazette* as soon as practicable after the date of that approval or refusal.

*[Section 16 amended by No. 67 of 1979 s.72; No. 7 of 1998 s.12.]*

### **17. Power to make an order notwithstanding non-compliance with procedural requirements**

The Court may, if it thinks fit, make an order under this Part notwithstanding any non-compliance with the procedural requirements thereof in relation to the scheme.

### **18. Restrictions on approval of schemes**

- (1) A scheme shall not be approved by the Court or the Attorney General under this Part, unless the Court or the Attorney General is satisfied that —
  - (a) the scheme is a proper one, that should carry out the desired purpose or proposal, and that is not contrary to law or public policy or good morals;
  - (b) the scheme can be approved under this Part;
  - (c) every proposed purpose is charitable and can be carried out; and
  - (d) subject to sections 10A (10) and 17, the requirements of this Part have been complied with in respect of the scheme.

(2) A refusal of the Court or the Attorney General to approve a scheme under this Part does not prevent fresh steps from being taken in accordance therewith to obtain the approval of any other scheme in respect of the same property, income or money.

*[Section 18 amended by No. 7 of 1998 s.13.]*

#### **19. Holder of property to transfer it in accordance with scheme**

Where any scheme approved by the Court or the Attorney General under this Part designates any institution, body or person to hold or receive any property, money or income under the scheme, the trustees in whom that property, money or income is vested shall convey, transfer or pay that property, money or income, with all profits or interest which may have accrued thereon, to that institution, body or person; and, upon so doing, the trustees shall no longer be liable in respect of any express or implied trust upon which they held the property, money or income, except for wilful default or misappropriation thereof.

*[Section 19 amended by No. 7 of 1998 s.14.]*

### **Part IV — Supervision of Charitable Trusts**

#### **20. Inquiries into condition and management of charities**

(1) The Attorney General may from time to time, as he in his discretion thinks fit, examine and inquire into all or any trusts for charitable purposes in the State, and may examine and inquire into the nature and objects, administration, management, and results thereof, and the value, condition, management, and application of the property and income belonging thereto.

(2) The Attorney General may, instead of himself making an examination or inquiry under subsection (1) of this section, from time to time appoint an officer of the Public Service or any person to make the examination or inquiry in any specified case or cases.

(3) Every trustee, and every person acting or having any concern in the management and administration, of a trust for a charitable purpose, or of the property or income thereof, into which an examination or inquiry is being made under this section, shall, on request, produce to the Attorney General or to the officer or person making the examination or inquiry all books, papers, writings, and documents in relation to the trust or the property or income thereof, or to the administration, management, value, condition, and application of that property and income, and shall answer all questions and give all assistance in connection with the examination or inquiry that he is reasonably able to answer or give.

(4) Every person who acts in contravention of or fails to comply in any respect with any provision of subsection (3) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5 000.

*[Section 20 amended by No. 7 of 1998 s.15.]*

#### **21. Proceedings to enforce or vary charitable trusts or to require a new scheme**

(1) The Attorney General, or an officer of the Public Service, or any other person, may apply to the Court in respect of any property, money or income subject to a trust for a charitable purpose, whether or not a scheme in respect of that property, money or income has been approved by the Court or the Attorney General under Part III of this Act or otherwise, for an order —

(a) requiring the trustees to carry out the trusts on which the property, money or income is held, and to comply with the provisions of the scheme (if any);

(b) requiring any trustee to meet his liability for any breach of trust affecting the property, money or income, as the Court may direct;

(c) excluding any purpose from the purposes for which the property, money or income may be used, applied or disposed of;

(d) giving directions in respect of the administration of the trust, or in respect of any examination or inquiry under section twenty of this Part, or in respect of any question to be answered or assistance to be given by any person in connection with that examination or inquiry; or

(e) directing that on and after the date of the order or any subsequent date specified in the order, the property, money or income subject to the trust shall not be used or applied or disposed of otherwise than in accordance with a scheme that, after the date of the order, is approved by the Court or the Attorney General under Part III. of this Act;

and the Court may make such order on that application as it thinks fit.

(2) Copies of an application under this section shall be served on the trustees of the property, money or income to which the application relates, and on the Attorney General.

(3) On an application under this section, the Court may decide what persons shall be heard before it in support of, or in opposition to, the application.

*[Section 21 amended by No. 7 of 1998 s.16.]*

## **Part V — Regulations**

*[Heading inserted by No. 7 of 1998 s.17.]*

### **22. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed to give effect to the purposes of this Act.

*[Section 22 inserted by No. 7 of 1998 s.17.]*

## **Notes**

<sup>1</sup>. This is a compilation of the *Charitable Trusts Act 1962* and includes all amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Charitable Trusts Act 1962</i>	82 of 1962	6 December 1962	6 December 1962	
<i>Acts Amendment (Master, Supreme Court) Act 1979, Part XVI</i>	67 of 1979	21 November 1979	11 February 1980 (see section 2 and <i>Gazette</i> 8 February 1980 p.383)	
<i>Hospitals Amendment Act 1994, section 18 item 2 of table</i>	103 of 1994	11 January 1995	3 February 1995 (see <i>Gazette</i> 3 February 1995 p.333)	
<i>Charitable Trusts Amendment Act 1998</i>	7 of 1998	11 May 1998	11 May 1998 (see section 2)	
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998, section 76</i>	10 of 1998	30 April 1998	30 April 1998 (see section 2 (1))	