



Western Australia

# **Charitable Trusts Act 2022**

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# Charitable Trusts Act 2022

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Western Australia

## Charitable Trusts Act 2022

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No. 38 of 2022

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**An Act —**

- to affect the law relating to charitable trusts; and
- to repeal the *Charitable Trusts Act 1962*; and
- to make a consequential amendment to the *Freedom of Information Act 1992*.

[Assented to 1 November 2022]

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This is the *Charitable Trusts Act 2022*.

### 2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### 3. Act binds Crown

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

### 4. Terms used

In this Act —

*administration*, of a charitable trust or property held for a charitable purpose, includes management of the trust or property (as the case requires);

*approved scheme* means a scheme approved under Part 3;

*charitable purpose* —

- (a) means a purpose that is charitable under the law of this State; and
- (b) includes a charitable purpose as defined in the *Charities Act 2013* (Commonwealth) section 12;

*charitable trust* means a trust for a charitable purpose;

*Court* means the Supreme Court;

*investigation* and *investigator* have the meanings given in section 32(1);



*involved in the administration*, of a charitable trust or property held for a charitable purpose, means employed, engaged or otherwise concerned (including as trustee) in the administration of the charitable trust or property (as the case requires);

*property* —

- (a) means any real or personal property; and
- (b) includes money;

*property held for a charitable purpose* means property that is held on trust for, or is otherwise to be applied to, a charitable purpose.

## **Part 2 — Charitable recreational facilities**

### **5. Recreational facilities for charitable purposes**

- (1) In this section —  
*recreational facilities* includes facilities provided for sport or leisure activities.
- (2) Recreational facilities are taken to be provided for a charitable purpose if —
  - (a) they are provided with the object of improving the conditions of life for the persons for whom the facilities are primarily intended (the *intended users*); and
  - (b) either —
    - (i) the intended users have need of those facilities because of their youth, age, infirmity or disability, poverty or social and economic circumstances; or
    - (ii) the facilities are to be available to members of the public or a substantial section of the public.
- (3) The reference in subsection (2) to the provision of recreational facilities includes —
  - (a) the provision of premises for those facilities and the maintenance of grounds and buildings of those premises; and
  - (b) the organising of any activity for the purposes of those facilities.

### **6. General savings of law relating to charitable trusts**

- (1) Nothing in this Part detracts from the principle that a purpose must be for the public benefit in order to be charitable.
- (2) Nothing in this Part restricts the purposes that are to be regarded as charitable independently of this Part.

**7. Savings for *Charitable Trusts Act 1962***

- (1) In this section —  
*commencement day* means the day on which the *Charitable Trusts Act 1962* came into operation.
- (2) Nothing in this Part applies —
  - (a) to make charitable a trust existing before commencement day; or
  - (b) to validate the disposition of any property before commencement day.
- (3) Nothing in this Part affects any order made in legal proceedings before commencement day.
- (4) Nothing in this Part requires anything properly done before commencement day, or anything done or to be done under a contract entered into before commencement day, to be treated for any purpose as wrongful or ineffective.

## **Part 3 — Schemes for property held for charitable purposes**

### **8. Terms used**

In this Part —

*Principal Registrar* has the meaning given in the *Supreme Court Act 1935* section 4(1);

*scheme report* has the meaning given in section 14(3)(a).

### **9. Application of Part**

This Part applies to property held for a charitable purpose whether or not the charitable purpose is defined by an approved scheme.

### **10. Property disposed of for other charitable purposes**

- (1) This section applies to property held for a charitable purpose (the *original purpose*) if —
  - (a) it is impossible, impracticable or inexpedient to carry out the original purpose; or
  - (b) the amount available is inadequate to carry out the original purpose; or
  - (c) the original purpose has already been effected; or
  - (d) the original purpose is unlawful or uncertain; or
  - (e) the value of the property is greater than is necessary for the original purpose.
- (2) The property (or, in the case of subsection (1)(e), the surplus property) must, in accordance with an approved scheme, be applied to some other charitable purpose (an *alternative charitable purpose*) that is as close as possible to the original purpose.

- (3) Subsection (2) may be applied so as to restore, with or without modification, the original purpose if this becomes possible.
- (4) In any of the circumstances referred to in subsection (1)(a) to (e), the persons in whom the property is vested must, as soon as reasonably practicable after becoming aware of those circumstances, submit to the Attorney General for approval a scheme for the application of the property to an alternative charitable purpose.
- (5) A failure by a person in whom the property is vested to comply with subsection (4) constitutes a ground for removal under section 45(1)(b).
- (6) Nothing in the *Charitable Collections Act 1946* section 16 prevents the application of this section.
- (7) This section extends to property held for a charitable purpose immediately before the commencement of this section.

## **11. Combining property held for same or similar purpose**

- (1) This section applies to property held for a charitable purpose (the *original property*) if —
  - (a) the charitable purpose (the *original purpose*) could be more effectively carried out by combining the original property with other property held for a charitable purpose (the *other property*); and
  - (b) the other property is held for a charitable purpose that is the same as, or similar to, the original purpose.
- (2) The original property may be combined, and jointly administered and applied, with the other property in accordance with an approved scheme.
- (3) This section extends to property held for a charitable purpose immediately before the commencement of this section.

**12. Extension or variation of powers or specification or variation of mode of administration**

- (1) This section applies to property held for a charitable purpose if the administration of the property could be facilitated by —
  - (a) extending or varying the powers of the persons in whom the property is vested; or
  - (b) specifying or varying the mode of administering the property.
- (2) The application of this section extends to the extension or variation of the powers of the persons in whom the property is vested, and to the specification or variation of a mode of administering the property, in relation to —
  - (a) an invalid accumulation clause; and
  - (b) an accumulation clause that will become invalid at the conclusion of the perpetuity period.
- (3) In accordance with an approved scheme, the powers of the persons in whom the property is vested may be extended or varied, and the mode of administering the property may be specified or varied, if the extension, variation or specification is consistent with the charitable purpose to which the property is to be applied.
- (4) If an action referred to in subsection (1)(a) or (b) becomes necessary for the administration of the property, the persons in whom the property is vested must, as soon as reasonably practicable after the action becomes necessary, submit to the Attorney General for approval a scheme that effects the action.
- (5) A failure by a person in whom the property is vested to comply with subsection (4) constitutes a ground for removal under section 45(1)(b).

- (6) Nothing in this section restricts the powers that are or may be conferred by or under any law of the State on the Court or the persons in whom the property is vested.
- (7) This section extends to property held for a charitable purpose immediately before the commencement of this section.

### **13. Schemes for approval**

- (1) Persons in whom property held for a charitable purpose is vested must prepare, and submit to the Attorney General, a scheme if they want the property to be dealt with in accordance with an approved scheme.
- (2) The scheme must relate to —
  - (a) if section 10 applies — the application of the property for an alternative charitable purpose as defined in section 10(2); or
  - (b) if section 11 applies — the combination and joint administration and application of the property referred to in that section; or
  - (c) if section 12 applies —
    - (i) the extension or variation of the powers of the persons in whom the property is vested; or
    - (ii) the specification or variation of the mode of administering the property.
- (3) If section 11 applies, the persons in whom the property to be combined is vested must jointly prepare, and seek approval for, the scheme.
- (4) If 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 persons in whom the property is vested may jointly prepare, and seek approval for, the schemes.

**14. Submitting schemes to Attorney General**

- (1) A scheme submitted to the Attorney General must be accompanied by —
  - (a) full details of all the facts in light of which it is proposed to apply property under the scheme; and
  - (b) copies of any instruments necessary to understand the scheme.
- (2) The Attorney General may remit the scheme to the persons in whom the property is vested for consideration of any amendments suggested by the Attorney General.
- (3) Except as provided in subsection (5), the Attorney General must —
  - (a) prepare a report (a *scheme report*) in writing on the scheme as submitted by the persons in whom the property is vested after those persons have considered any amendments suggested by the Attorney General; and
  - (b) give a copy of the scheme report to the persons in whom the property is vested.
- (4) A scheme report must address the matters referred to in section 25(1).
- (5) The Attorney General is not required to prepare a scheme report if the Attorney General —
  - (a) approves the scheme under section 16(6)(a); and
  - (b) considers that a scheme report is unnecessary in the circumstances.
- (6) The Attorney General must make the scheme and scheme report available for inspection by the public free of charge.



**15. Attorney General's fees for considering schemes and preparing scheme reports**

- (1) The Attorney General may charge persons submitting a scheme under section 14 reasonable fees for the costs and expenses (including legal costs) incurred by the Attorney General in considering the scheme and preparing a scheme report.
- (2) The Attorney General's legal costs must be charged in accordance with —
  - (a) a legal costs determination made for the purposes of this section under the *Legal Profession Uniform Law Application Act 2022* section 133(5); or
  - (b) if paragraph (a) does not apply, in accordance with a legal costs determination in respect of contentious business before the Court made under the *Legal Profession Uniform Law Application Act 2022* section 133(1)(b)(i).
- (3) For the purposes of subsection (2), a reference in the *Legal Profession Uniform Law Application Act 2022* section 133 to a law practice includes a reference to any person providing legal services to the Attorney General in considering the scheme and preparing a scheme report.

**16. Applications for approval of schemes by Attorney General**

- (1) This section applies in relation to a scheme if —
  - (a) the value of the property to which the scheme relates is less than \$100 000, or any greater amount prescribed for the purposes of this paragraph; or
  - (b) income in the previous financial year from the property to which the scheme applies was less than \$20 000, or any greater amount prescribed for the purposes of this paragraph.

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- (2) For the purposes of subsection (1)(a), the value of the property must be determined without regard to any limits on use imposed by a charitable purpose to which the property is to be applied.
- (3) In relation to a scheme jointly prepared under section 13(3) or (4), this section applies only if subsection (1) applies to each of the sets of property to be combined for the purposes of the scheme.
- (4) The persons in whom the property is vested may apply to the Attorney General for approval of the scheme.
- (5) The application must be made in writing.
- (6) After receiving the application, the Attorney General must, in accordance with section 25(1) —
  - (a) approve the scheme as submitted by the persons in whom the property is vested after those persons have considered any amendments suggested by the Attorney General under section 14(2); or
  - (b) refuse to approve the scheme.
- (7) Before making a decision under subsection (6), the Attorney General —
  - (a) may require the persons in whom the property is vested to give public notice of the scheme in any manner the Attorney General thinks fit; and
  - (b) must 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.

**17. Approval of scheme by Attorney General**

- (1) If the Attorney General approves a scheme, the Attorney General must give to the persons in whom the property is vested —
  - (a) a written notice of the approval (an *approval notice*); and

- (b) if the Attorney General has prepared a scheme report in relation to the scheme — a copy of the report together with the approval notice.
- (2) The persons in whom the property is vested must ensure that the approval notice is published in the *Gazette* within 28 days after the notice is received by the persons.
- (3) A failure by a person in whom the property is vested to comply with subsection (2) constitutes a ground for removal under section 45(1)(b).
- (4) The approval of a scheme by the Attorney General takes effect at the time it is granted or a later time specified in the approval notice.
- (5) The Attorney General may approve a scheme despite non-compliance with the procedural requirements of this Part in relation to the scheme.
- (6) If the Attorney General refuses to approve the scheme —
  - (a) the Attorney General must set out the reasons for that decision in a scheme report; and
  - (b) the persons in whom the property is vested may apply to the Court under section 18(1) for approval of the scheme.

## **18. Approval of scheme by Court**

- (1) The persons in whom the property is vested may, at any time after receipt of a scheme report relating to a scheme submitted by them to the Attorney General, apply to the Court for approval of the scheme.
- (2) The application must be accompanied by a copy of the scheme and the scheme report.

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- (3) The Court must make the application, scheme and scheme report available for inspection by the public free of charge.
- (4) The persons in whom the property is vested must ensure that notice, in a form approved by the Principal Registrar, of the Court's approval of the scheme or refusal to approve the scheme is published in the *Gazette* within 28 days after the order approving or refusing to approve the scheme is made under section 21(4).
- (5) A failure by a person in whom the property is vested to comply with subsection (4) constitutes a ground for removal under section 45(1)(b).

**19. Application for Court approval must be advertised**

- (1) The Court must not consider an application under section 18(1) unless the persons in whom the property is vested give notice of the application in accordance with subsection (2).
- (2) Notice must be given within a period that is not more than 3 months and not less than 1 month before the date proposed for the consideration of the application —
  - (a) to the public or a person or class of persons having an interest in the application of the property, as directed by the Court; and
  - (b) in a manner approved by the Court.
- (3) The notice must —
  - (a) give a brief summary of the scheme; and
  - (b) state the date proposed for the hearing of the application by the Court; and
  - (c) require any person wanting to oppose the scheme to give written notice of their intention to do so to the Principal Registrar, the persons in whom the property is vested and the Attorney General not less than 7 days before the date proposed for the hearing of the application.

**20. Opposition to application for scheme**

- (1) A person wanting to oppose an application under section 18(1) must give notice of the person's intention to oppose the application to the following —
  - (a) the Principal Registrar;
  - (b) the persons in whom the property is vested;
  - (c) the Attorney General.
- (2) The notice must be given in writing not less than 7 days before the proposed hearing of the application.

**21. Jurisdiction of Court in respect of schemes**

- (1) This section applies if an application for approval of a scheme is made to the Court under section 18(1).
- (2) The Court may decide which persons are to be heard before it in support of, or in opposition to, the scheme.
- (3) The Court has jurisdiction and authority to hear and determine all matters relating to the scheme.
- (4) Subject to section 25, the Court may, as it thinks fit, make an order —
  - (a) approving the scheme with or without modification; or
  - (b) refusing to approve the scheme.
- (5) The Court may make any order it thinks fit if —
  - (a) a scheme is approved under subsection (4)(a); and
  - (b) the persons in whom the property is vested make a further application for the Court to approve variations to the scheme.

**22. Power to make an order despite non-compliance with procedural requirements**

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

**23. Administration of property through schemes**

- (1) An approved scheme may provide that the purposes of the scheme may, in whole or in part, be carried out, and that any property to which the scheme relates may be administered, by any of the following —
  - (a) the trustees of any existing charitable trust;
  - (b) a health service provider as defined in the *Health Services Act 2016* section 6;
  - (c) the Public Trustee or any trustees who could be appointed under the *Trustees Act 1962*.
- (2) Nothing in this section limits a scheme in making any other provision for carrying out the purposes of the scheme under this Part or for administering any property to which the scheme relates.

**24. Expenses of scheme**

- (1) In this section —

**expenses**, of a scheme, means the reasonable expenses of —

  - (a) preparing and advertising the scheme; and
  - (b) obtaining approval for the scheme (including any fees payable under section 15(1)).
- (2) A scheme prepared and approved under this Part may provide that the expenses of the scheme must be paid out of, and be a charge on, the property to which the scheme relates.

- (3) If a scheme was jointly prepared under section 13(3) or (4), the scheme may specify how the expenses of the scheme are to be apportioned.

**25. Restrictions on approval of schemes**

- (1) The Court or the Attorney General must not approve a scheme under this Part unless satisfied of all of the following —
- (a) that the scheme is appropriate to carry out each proposed purpose and is not contrary to the law of this State or generally accepted standards of decency and propriety;
  - (b) that the scheme can be approved under this Part;
  - (c) that each proposed purpose under the scheme is a charitable purpose that can be carried out;
  - (d) except as provided in sections 17(5) and 22, that the requirements of this Part have been complied with in relation to 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 under this Part to obtain the approval of any other scheme in respect of the same property.

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

- (1) This section applies if a scheme approved by the Court or the Attorney General under this Part designates a person or body to hold or receive property under the scheme.
- (2) The persons in whom that property is vested must transfer that property to that person or body.
- (3) When property is transferred under subsection (2), the persons in whom the property was previously vested are no longer liable in respect of any express or implied trust upon which they held the property.

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- (4) Subsection (3) does not remove the liability of the persons in whom the property was previously vested for any default or misappropriation of the property.

**27. Savings for *Charitable Trusts Act 1962***

A scheme approved under the *Charitable Trusts Act 1962* Part III is taken to be an approved scheme.



## Part 4 — Investigation of charitable trusts

### 28. Terms used

In this Part —

*authorised person* means a person who is —

- (a) 1 or more of the following —
    - (i) a legal practitioner;
    - (ii) an accountant;
    - (iii) a person employed or engaged by the department principally assisting the Attorney General in the administration of this Act;
    - (iv) a person of a prescribed class;
- and
- (b) authorised by the Attorney General to conduct, or assist in, an investigation;

*complaint* and *complainant* have the meanings given in section 31(1);

*investigator's report* has the meaning given in section 41(1);

*provider* means a person who provides a document or information relating to a charitable trust to the Attorney General (directly or via an authorised person) or the Western Australian Charitable Trusts Commission —

- (a) in response to a requirement; or
- (b) voluntarily;

*requirement* has the meaning given in section 32(2);

*Western Australian Charitable Trusts Commission* means the commission established under section 29(1).

**29. Western Australian Charitable Trusts Commission established**

- (1) The Western Australian Charitable Trusts Commission is established.
- (2) The Western Australian Charitable Trusts Commission is constituted by —
  - (a) unless paragraph (b) or (c) applies, the Commissioner appointed under the *Parliamentary Commissioner Act 1971* section 5(1); or
  - (b) in the circumstances referred to in the *Parliamentary Commissioner Act 1971* section 6A(2) — the Deputy Commissioner appointed under section 5(1a) of that Act; or
  - (c) in the circumstances referred to in the *Parliamentary Commissioner Act 1971* section 7(2) — the Acting Commissioner appointed under section 7(1) of that Act.
- (3) The Deputy Commissioner appointed under the *Parliamentary Commissioner Act 1971* section 5(1a) has the duties that the Western Australian Charitable Trusts Commission directs.
- (4) The *Parliamentary Commissioner Act 1971* sections 9, 10, 11 and 20(1) apply to the Western Australian Charitable Trusts Commission as if —
  - (a) references in those sections —
    - (i) to the Commissioner were to the Western Australian Charitable Trusts Commission; and
    - (ii) to “this Act” were to the *Charitable Trusts Act 2022*;and
  - (b) in section 10, references to the Deputy Commissioner and the Acting Commissioner were omitted; and

- (c) in section 11(1) the words “In so far as he is authorised so to do by Rules of Parliament made under this Act, or a resolution of both Houses of Parliament” were omitted.

**30. Functions of the Western Australian Charitable Trusts Commission**

The Western Australian Charitable Trusts Commission has the following functions —

- (a) to conduct investigations, including audits of the accounts of charitable trusts under investigation;
- (b) to make an investigator’s report on each investigation;
- (c) to make recommendations to the trustees of charitable trusts in respect of matters arising out of investigations.

**31. Complaints relating to charitable trusts or classes of charitable trusts**

- (1) A person (the *complainant*) may make a complaint (the *complaint*) to the Attorney General or Western Australian Charitable Trusts Commission about a charitable trust or a class of charitable trusts.
- (2) The complaint must be made in a manner approved by the Attorney General or Western Australian Charitable Trusts Commission (as the case requires).
- (3) This section extends to —
  - (a) trusts created before the commencement of this section; and
  - (b) acts done and omissions made before the commencement of this section in relation to those trusts.

**32. Investigation of charitable trusts**

- (1) An investigation of a charitable trust or class of charitable trusts (an *investigation*) may be carried out by the following (an *investigator*) —
- (a) an authorised person acting at the direction of the Attorney General —
    - (i) on a complaint to the Attorney General; or
    - (ii) on the Attorney General’s own initiative;
  - (b) the Western Australian Charitable Trusts Commission —
    - (i) on a complaint to the Western Australian Charitable Trusts Commission; or
    - (ii) on referral by the Attorney General.
- (2) An investigator may, in the performance of a function under this Act, give to a person a written notice (a *requirement*) requiring the person to provide to the investigator —
- (a) a document or other information —
    - (i) relating to a charitable trust; or
    - (ii) concerning any person involved in the administration of a charitable trust;
- or
- (b) any other assistance that is reasonably necessary.
- (3) An investigator may refuse to investigate a complaint or, having commenced to investigate a complaint, may refuse to continue the investigation, if the investigator is of the opinion that —
- (a) the matter raised in the complaint is trivial; or
  - (b) the complaint is frivolous or vexatious or is not made in good faith; or

- (c) the complainant has provided insufficient information;  
or
  - (d) another person or body has investigated, is investigating or is about to investigate the charitable trust or a trustee of the charitable trust to which the complaint relates; or
  - (e) having regard to all the circumstances of the case, the investigation, or the continuance of the investigation of the matter raised in the complaint, is unnecessary or unjustifiable.
- (4) If an investigator refuses to investigate a complaint, or refuses to continue an investigation, the investigator, by notice in writing —
- (a) must inform the complainant of the investigator’s decision; and
  - (b) may, if the investigator considers it appropriate, provide reasons for the decision.
- (5) The Western Australian Charitable Trusts Commission may regulate its procedure in relation to an investigation in any manner it thinks fit.

**33. Powers under *Royal Commissions Act 1968***

- (1) An investigator has all the powers, rights and privileges that are specified in the *Royal Commissions Act 1968* as they relate to a Royal Commission and the Chairman of the Royal Commission.
- (2) For the purposes of subsection (1), the provisions of the *Royal Commissions Act 1968* have effect as if they were enacted in this Act and in terms made applicable to the investigator and that matter as if the matter were one into which a Royal Commission was appointed to inquire under that Act.

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- (3) This section applies despite any obligation imposed by an enactment or rule of law to maintain secrecy or impose any other restriction in relation to information obtained by, or furnished to, an investigator.
- (4) A provider is not entitled to any privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) Subject to subsections (3) and (4), a person is not compelled for the purposes of an investigation to give any evidence or produce any document that the person could not be compelled to give or produce in proceedings before a court.

**34. Western Australian Charitable Trusts Commission's power to carry out audits of charitable trust accounts**

- (1) The Western Australian Charitable Trusts Commission may, as part of an investigation, carry out an audit of the accounts of a charitable trust under investigation.
- (2) The Western Australian Charitable Trusts Commission may, in writing, appoint, or direct the trustees of the charitable trust to arrange, an appropriately qualified person (an *auditor*), whether corporate or unincorporate, to carry out all or a part of the audit.
- (3) In the case of an appointment by the Western Australian Charitable Trusts Commission, the auditor may be a public service officer.
- (4) If an auditor, however appointed or arranged, is not a public service officer, any fee payable to the auditor must be fixed by the Western Australian Charitable Trusts Commission.
- (5) An auditor must report on completion of the audit to the Western Australian Charitable Trusts Commission.

- (6) The reference in section 32(1)(b) to the Western Australian Charitable Trusts Commission includes an auditor carrying out an audit.

**35. Power to enter premises**

For the purposes of conducting an investigation, an investigator may, at any reasonable time —

- (a) enter any premises occupied or used by a person to whom a requirement has been given; and
- (b) inspect those premises or anything on those premises.

**36. Consequences of disclosure of privileged documents or information**

- (1) This section applies if a provider discloses to an investigator a document or information (the *privileged document or information*) subject to privilege against self-incrimination or legal professional privilege.
- (2) In the case of legal professional privilege —
  - (a) the privilege relating to a trustee is abrogated only to the extent that the privileged document or information relates to the administration of the trust; and
  - (b) the disclosure does not otherwise constitute a waiver of legal professional privilege.
- (3) The privilege is not abrogated in relation to the disclosure of the privileged document or information to a person other than the investigator.
- (4) Subsection (3) does not apply if —
  - (a) the investigator is the Western Australian Charitable Trusts Commission or an authorised person, and the disclosure is made to the Attorney General; or

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- (b) the disclosure is with the consent of the person who benefits from the privilege; or
  - (c) the disclosure is for the purposes of proceedings for an offence under section 39 or 40(2); or
  - (d) the disclosure is for the purposes of civil proceedings, whether under this Act, the *Trustees Act 1962* or the inherent jurisdiction of the Court, for directions in respect of the charitable trust —
    - (i) to remove the trustee; or
    - (ii) otherwise in respect of a breach of trust.
- (5) A privileged document or information provided in compliance with a requirement is not admissible in evidence against the person in proceedings other than proceedings referred to in subsection (4)(c) or (d).

**37. Confidentiality**

- (1) Other than as is necessary for the administration of this Act, nothing in this Part authorises access to, or the disclosure of, a document or information provided to an investigator by a provider.
- (2) The following persons are subject to a duty of confidentiality —
  - (a) people who are or were engaged or employed to perform a function under this Part;
  - (b) any other people —
    - (i) to whom a document or information is disclosed under this Part; or
    - (ii) who gain access (properly or improperly) to a document or information obtained under this Part.



- (3) A person subject to a duty of confidentiality must not record, make use of or disclose a document or information provided by a provider except —
- (a) with the consent of the provider; or
  - (b) for the purpose of enabling or assisting the Western Australian Charitable Trusts Commission or Attorney General to perform or exercise any functions or powers under this Act or another law relating to charitable trusts, including disclosing it —
    - (i) to a trustee of, or a person with an advisory role in relation to, a relevant charitable trust; or
    - (ii) to a person or class of persons, or a person or body representing a person or class of persons, intended to benefit from the application of trust funds from the relevant charitable trust;
- or
- (c) for the purpose of obtaining or providing legal advice; or
  - (d) for the purpose of legal proceedings relating to the relevant charitable trust instituted by the Attorney General or to which the Attorney General is or may become a party, including —
    - (i) for representation in legal proceedings; and
    - (ii) to a witness or potential witness in the proceedings;
- or
- (e) in accordance with an order of the Court on application by the Attorney General; or
  - (f) as permitted or required under this Act or another written law; or

- (g) for the purposes of notifying, or referring a matter to —
  - (i) the Commissioner of Police; or
  - (ii) the Australian Securities and Investments Commission established under the *Australian Securities and Investments Commission Act 2001* (Commonwealth); or
  - (iii) the Advisory Committee established under the *Charitable Collections Act 1946* section 10; or
  - (iv) the Commissioner of the Australian Charities and Not-for-profits Commission established under the *Australian Charities and Not-for-profits Commission Act 2012* (Commonwealth) section 110-5; or
  - (v) the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth) section 1-30; or
  - (vi) the Commissioner of Taxation holding office under the *Taxation Administration Act 1953* (Commonwealth); or
  - (vii) the Commissioner of State Revenue;or
- (h) if disclosing it to a person or class of persons prescribed by the regulations.

Penalty for this subsection: a fine of \$50 000.

- (4) A person to whom a document or information is disclosed under subsection (3)(g) may record, make use of or disclose the document or information in the performance of functions under any written law or other law, consistent with (or in connection with) the purpose for which the document or information was disclosed.

- (5) Without limiting subsection (4), a person to whom a document or information is disclosed under subsection (3)(g) may record, make use of or disclose the document or information to, or for the use of, any entity, court or tribunal in criminal, civil or administrative proceedings that are related to the original purpose for which the document or information was provided.

**38. Protection from liability for complainants and providers**

- (1) This section applies if a person, in good faith —
- (a) makes a complaint; or
  - (b) provides a document, information or assistance to an investigator in relation to a charitable trust or class of charitable trusts, whether in response to a requirement or voluntarily.
- (2) In making the complaint or providing the document, information or assistance, the person —
- (a) does not incur any civil or criminal liability; and
  - (b) is not to be regarded as having breached any duty of confidentiality or secrecy imposed by law; and
  - (c) is not to be regarded as having —
    - (i) breached any professional ethics or standards or any principles of conduct applicable to the person's employment; or
    - (ii) engaged in unprofessional conduct;and
  - (d) is not liable —
    - (i) to any disciplinary action under a written law; or
    - (ii) to be dismissed from any office or to have the person's employment terminated; or
    - (iii) to have the person's services dispensed with or otherwise terminated.

**39. False or misleading information**

A provider must not provide to an investigator a document or information that the provider knows to be false or misleading in a material particular.

Penalty: a fine of \$50 000.

**40. Failure to comply with requirement**

(1) In this section —

*specified period*, in relation to a requirement, means —

- (a) 14 days; or
- (b) any other period specified by the investigator in the requirement or otherwise in writing.

(2) A person who is given a requirement commits an offence if the person fails to comply with the requirement within the specified period after it is given.

Penalty for this subsection: a fine of \$50 000.

(3) It is a defence to a charge under subsection (2) to prove that —

- (a) the person had a reasonable excuse for not complying with the requirement; and
- (b) the person objected to the requirement in accordance with subsection (4).

(4) A person who is given a requirement may, within the specified period after the requirement is given, object to complying with the requirement by lodging with the investigator a notice in writing specifying a reasonable excuse for not complying with the requirement.

(5) For the purposes of subsections (3) and (4), it is not a reasonable excuse to assert —

- (a) privilege against self-incrimination; or
- (b) if the person is a trustee of the relevant charitable trust — legal professional privilege.

**41. Investigator's report**

- (1) An investigator must prepare a report on the investigation (an *investigator's report*).
- (2) An investigator must give a copy of the investigator's report to the Attorney General.
- (3) An investigator's report may be accompanied by notice in writing directing that a relevant trustee must, within a period specified in the notice, take reasonably necessary action specified in the notice in response to the findings in the report.
- (4) If the investigator's report is accompanied by the notice, the investigator must give a copy of the notice to the relevant trustee.
- (5) If a relevant trustee fails to comply with the notice, the investigator must prepare an amended or further investigator's report.
- (6) A failure by a trustee to comply with the notice constitutes a ground for removal of the trustee under section 45(1)(b)(i).

**42. Investigator's report may be published, tabled and provided to certain persons by Attorney General**

On receiving an investigator's report, the Attorney General may, if the Attorney General considers the report to be final, do any of the following —

- (a) cause a copy of the report, in whole or in part, to be laid before each House of Parliament;
- (b) provide a copy of the report, in whole or in part, to the following —
  - (i) a complainant;
  - (ii) a trustee;
  - (iii) a person referred to in section 37(3)(g) or (h).

**43. Recovery of costs and expenses of investigation of charitable trust**

- (1) In this section —  
*costs and expenses*, of an investigation (including any audit of the accounts of a charitable trust under the investigation), means the costs and expenses of an investigator in conducting the investigation.
- (2) The Attorney General may apply to the Court to recover the costs and expenses of an investigation.
- (3) On an application under subsection (2), the Court may make orders for the payment of the whole or part of the costs and expenses of the investigation —
- (a) out of the property of the relevant charitable trust; or
  - (b) by a trustee of the relevant charitable trust; or
  - (c) if the investigation was the result of a complaint and the Court finds that the complaint was frivolous or vexatious or was not made in good faith — by the complainant.

## Part 5 — Proceedings in relation to charitable trusts

### 44. Proceedings to enforce or vary charitable trusts

- (1) This section applies in relation to property held by a charitable trust whether or not a scheme in respect of the property has been approved under Part 3.
- (2) A person may apply to the Court for 1 or more of the following —
  - (a) an order requiring a trustee of a charitable trust to carry out the trusts on which the property is held, and to comply with the provisions of an approved scheme (if any) relating to the property;
  - (b) an order requiring a trustee of a charitable trust to meet the trustee's liability for any breach of trust affecting the property, as the Court may direct;
  - (c) an order requiring a trustee of a charitable trust to provide a document or information to a person or class of persons, or a person or body representing a person or class of persons, intended to benefit from the application of trust funds from the charitable trust;
  - (d) an order giving directions in respect of —
    - (i) the administration of a charitable trust; or
    - (ii) any investigation in relation to a charitable trust; or
    - (iii) any assistance required of a person under section 32(2)(b);
  - (e) an order requiring an audit of the accounts of a charitable trust;
  - (f) an order directing that on and after the date of the order, or any subsequent date specified in the order, the property must not be applied except in accordance with an approved scheme;

- (g) an order directing that a person holding the property must not dispose of it without the approval of the Court, the Attorney General or some other person;
  - (h) an order restricting the transactions that may be entered into or the nature or amount of the payments that may be made, in the administration of a charitable trust, without the approval of the Court, the Attorney General or some other person;
  - (i) any other order that is necessary or convenient to be made for giving effect to an order referred to in any of paragraphs (a) to (h).
- (3) Copies of the application must be served on the trustees of a charitable trust to which the application relates.
  - (4) The Court may decide which persons are to be heard in relation to the application.
  - (5) After receiving the application, the Court may make any order under subsection (2) it thinks fit.

**45. Proceedings relating to persons involved in administration of charitable trusts**

- (1) The Attorney General or a person authorised by the Attorney General may, in accordance with subsection (2), apply to the Court for 1 or more of the following —
  - (a) an order precluding the involvement of a person in the administration of a charitable trust;
  - (b) an order removing —
    - (i) all or any trustees of a charitable trust; or
    - (ii) any other person involved in the administration of a charitable trust;
  - (c) an order appointing a person as a trustee of a charitable trust;



- (d) any other order that is necessary or convenient to be made for giving effect to an order referred to in any of paragraphs (a) to (c).
- (2) The application may be made on 1 or more of the following grounds —
- (a) that there has been misconduct or mismanagement in relation to the administration of a charitable trust;
  - (b) that it is necessary or desirable to act for the purpose of protecting existing or future property held by a charitable trust;
  - (c) that a person is not a fit and proper person to be involved in the administration of a charitable trust;
  - (d) in the case of an order under subsection (1)(b), that a person has failed to comply with a provision of this Act and that failure is specified by this Act to constitute a ground for removal under that subsection.
- (3) After receiving the application, the Court may make any order under subsection (1) it thinks fit.
- (4) A person must not fail to comply with an order under subsection (3).
- Penalty for this subsection: imprisonment for 1 year and a fine of \$50 000.

**46. Certain persons unfit to be involved in administration of charitable trusts**

- (1) Except as provided in subsection (2), a person must not be involved in the administration of a charitable trust if the person is any of the following —
- (a) a person who is an insolvent under administration as defined in the *Corporations Act 2001* (Commonwealth) section 9;

- (b) a person who is the director of a corporation that is insolvent or under administration as those terms are defined in the *Corporations Act 2001* (Commonwealth) section 9;
- (c) a person who was the director of a corporation at the time it became insolvent or went into administration as those terms are defined in the *Corporations Act 2001* (Commonwealth) section 9;
- (d) a person who is disqualified by or under a written law or a law of another State, a Territory or the Commonwealth from being employed, engaged or otherwise involved in the management of a body corporate or other entity registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Commonwealth);
- (e) a person —
  - (i) in relation to whom an order has been made under section 45(1)(a) or (b); or
  - (ii) who has been otherwise removed as trustee of a charitable trust by order of the Court;
- (f) a person who has been convicted of an offence involving fraud or dishonesty;
- (g) a body corporate of which an individual referred to in any of paragraphs (a) to (f) is a director.

Penalty for this subsection: imprisonment for 1 year and a fine of \$50 000.

- (2) Subsection (1) applies to a person in respect of a charitable trust unless the Court grants leave under subsection (5) for the person to be involved in the administration of a charitable trust.
- (3) A person to whom subsection (1) applies may apply to the Court for leave to be involved in the administration of a charitable trust.

- (4) The Attorney General is a party to the application.
- (5) On receipt of the application the Court may, subject to any conditions the Court considers appropriate, grant the leave if it considers there are exceptional circumstances warranting the granting of the leave.
- (6) A person to whom subsection (1) applies who has not been granted leave under subsection (5) (a person who is *unfit*) —
  - (a) cannot be appointed as a trustee of a charitable trust; and
  - (b) if the person is a trustee of a charitable trust when the person becomes unfit — is, by force of this section, removed as trustee on the later of —
    - (i) 30 days after the person becomes unfit; or
    - (ii) if the person applies for leave under subsection (3) within 30 days after the person becomes unfit and leave is refused — the day on which leave is refused.

#### **47. Conduct of proceedings related to charitable trusts**

- (1) This section applies to proceedings in the Court under the law relating to charitable trusts, other than proceedings for an offence under this Act.
- (2) An originating process lodged with the Court by a person other than the Attorney General must be served on the Attorney General.
- (3) When hearing the proceedings the Court is not bound by the rules of evidence and may be informed and conduct the proceedings in any manner the Court thinks fit.

## **Part 6 — Gifts by certain trusts for philanthropic purposes**

### **48. Terms used**

In this Part —

**eligible recipient** means a deductible gift recipient —

- (a) listed in item 1 of the Table to the *Income Tax Assessment Act 1997* (Commonwealth) section 30-15; and
- (b) that is not a charity due to its connection with government or by being a government entity but would be a charity if it did not have the connection with government or it was not a government entity;

**former commencement day** means the day on which the *Charitable Trusts Amendment Act 2011* came into operation;

**former prescribed power** means a prescribed power as defined in the *Charitable Trusts Act 1962* section 22D(1);

**government entity** has the meaning given in the *Charities Act 2013* (Commonwealth) section 4;

**prescribed power**, for a prescribed trust, means a power referred to in section 49 or 50;

**prescribed trust** means —

- (a) a fund referred to in item 2 of the Table to the *Income Tax Assessment Act 1997* (Commonwealth) section 30-15, whether created before, on or after former commencement day; or
- (b) a trust that is established and maintained for charitable or philanthropic purposes and is of a class prescribed by the regulations, whether created before, on or after former commencement day;

**trust instrument**, in relation to a prescribed trust, means the will or instrument of trust establishing the prescribed trust, as modified by all validly executed amendments.

**49. Prescribed trust: trust instrument containing express power to give to eligible recipients**

The trust instrument of a prescribed trust may include an express power for the trustees to provide property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.

**50. Prescribed trust: trust instrument not containing express power to give to eligible recipients**

- (1) The powers of the trustees of a prescribed trust, whose trust instrument does not contain an express power to do so, include a power to provide property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.
- (2) Subsection (1) —
  - (a) applies despite any provision to the contrary in the trust instrument; but
  - (b) does not apply in relation to a particular eligible recipient or a particular class of eligible recipients to the extent that there is an express prohibition in the trust instrument against the provision by the trustees of property or benefits —
    - (i) to or for that eligible recipient or class of eligible recipients; or
    - (ii) for the establishment of that eligible recipient or class of eligible recipients.

**51. Ancillary provisions**

- (1) This Act applies to a prescribed power as if it were a power exercisable for a charitable purpose.
- (2) Without limiting subsection (1) —
  - (a) neither the existence nor the exercise of the prescribed power affects the validity or status of a charitable trust as a charitable trust; and

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- (b) a prescribed trust is to be construed and given effect to as if —
  - (i) the prescribed power were a power exercisable for a charitable purpose; and
  - (ii) any application of property held by the trust in the way allowed by the power were to or for a charitable purpose;and
- (c) the existence or exercise of the prescribed power does not affect the control of a prescribed trust by the Court in the exercise of the Court's general jurisdiction in relation to charitable trusts; and
- (d) the jurisdiction mentioned in paragraph (c) extends to the prescribed power as if the power were exercisable for a charitable purpose.

**52. Validation provisions for period preceding former commencement day**

- (1) In this section —  
*former eligible recipient* means an eligible recipient as defined in the *Charitable Trusts Act 1962* section 22A.
- (2) The provision, before former commencement day, by the trustees of a prescribed trust of property or benefits to or for a former eligible recipient or for the establishment of a former eligible recipient —
  - (a) is taken to be, and always to have been, a provision for an authorised and valid purpose of the prescribed trust; and
  - (b) does not affect, and is taken never to have affected, the status of the prescribed trust as a charitable trust.

- (3) Subsection (2) applies despite a failure by the trustees of a prescribed trust to do any of the following —
- (a) make a declaration under the *Charitable Trusts Act 1962* section 22C(3);
  - (b) adhere to a limitation applicable in relation to the prescribed trust under the *Charitable Trusts Act 1962* section 22C(4) and (5);
  - (c) comply with the *Charitable Trusts Act 1962* section 22C(6).
- (4) The inclusion of a former prescribed power in the trust instrument of a prescribed trust before former commencement day is taken to be, and always to have been, valid.

**53. Validation and transitional provisions for period preceding commencement of this Part**

- (1) In this section —  
*new commencement day* means the day on which this Part comes into operation.
- (2) The inclusion of a former prescribed power for a prescribed trust on and after former commencement day but before new commencement day is taken to be, and always to have been, valid.
- (3) The exercise of a former prescribed power on and after former commencement day but before new commencement day is taken to be, and always to have been, valid despite a failure by the trustees of a prescribed trust to do any of the following —
- (a) make a declaration under the *Charitable Trusts Act 1962* section 22C(3);
  - (b) adhere to a limitation applicable in relation to the prescribed trust under the *Charitable Trusts Act 1962* section 22C(4) and (5);

- (c) comply with the *Charitable Trusts Act 1962* section 22C(6).
- (4) The former prescribed power is, on and after new commencement day, taken to be a prescribed power for the purposes of section 51.



## Part 7 — Miscellaneous

### 54. Protection from liability for persons performing functions under Act

- (1) A person does not incur any civil or criminal liability for an act done or omission made in good faith in the performance, or purported performance, of a function under this Act or any other law relating to charitable trusts.
- (2) In doing the act, the person is not liable —
  - (a) to any disciplinary action under a written law; or
  - (b) to be dismissed from any office or to have the person's employment terminated; or
  - (c) to have the person's services dispensed with or otherwise terminated.
- (3) In this section, a reference to the doing of an act includes a reference to making an omission.

### 55. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may prescribe the process for making and responding to a requirement as defined in section 32(2).

## **Part 8 — Repeal, savings and transitional provisions and consequential amendment**

**56. Charitable Trusts Act 1962 repealed**

The *Charitable Trusts Act 1962* is repealed.

**57. Savings and transitional provisions for *Charitable Trusts Act 1962***

(1) In this section —

*commencement day* means the day on which section 56 comes into operation;

*former Act* means the *Charitable Trusts Act 1962*;

*scheme application* means an application to the Attorney General or the Court under Part III of the former Act.

- (2) A scheme application pending immediately before commencement day must be determined under the former Act as if it had not been repealed.
- (3) An examination or inquiry commenced under section 20 of the former Act but not concluded immediately before commencement day may, in the Attorney General's discretion, be continued —
- (a) under the former Act as if it had not been repealed; or
  - (b) under Part 4 as if it had commenced as an investigation.
- (4) An application made under section 21 of the former Act but not determined immediately before commencement day must be determined under the former Act as if it had not been repealed.
- (5) A declaration under section 22C of the former Act continues in operation on and after commencement day as if the former Act had not been repealed.

**58. *Freedom of Information Act 1992* amended**

- (1) This section amends the *Freedom of Information Act 1992*.
- (2) In Schedule 2 after the item for “The State Government Insurance Corporation.” insert:

The Western Australian Charitable Trusts Commission.

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## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
administration .....	4
alternative charitable purpose .....	10(2)
approval notice.....	17(1)
approved scheme.....	4
auditor .....	34(2)
authorised person .....	28
charitable purpose .....	4
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