

WESTERN AUSTRALIA

**CHARITABLE TRUSTS
AMENDMENT ACT 1998**

No. 7 of 1998

AN ACT to amend the *Charitable Trusts Act 1962*.

[Assented to 11 May 1998.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Charitable Trusts Amendment Act 1998*.

Commencement

2. This Act comes into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Charitable Trusts Act 1962** is referred to as the principal Act.

[* *Reprinted as authorized 24 March 1971.*
For subsequent amendments see 1996 Index to
Legislation of Western Australia, Table 1, p. 31.]

Section 7 amended

4. (1) Section 7 (1) and (2) of the principal Act are amended by deleting “in the manner directed, and subject to the provisions hereinafter contained, in this Part.” and substituting in each place the following —

“ in accordance with a scheme approved under this Part. ”.

(2) Section 7 (4) of the principal Act is amended by inserting after “Court” the following —

“ or the Attorney General ”.

Sections 7A and 7B inserted

5. After section 7 of the principal Act the following sections are inserted —

“ **Small trusts may be terminated**

7A. (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*.

Combining property held for similar purposes

7B. (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.

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(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 8 amended

6. Section 8 (1) of the principal Act is amended by deleting “in the manner directed, and subject to the provisions hereinafter contained, in this Part.” and substituting the following —

“ in accordance with a scheme approved under this Part. ”.

Section 9 repealed and a section substituted

7. Section 9 of the principal Act is repealed and the following section is substituted —

“ **Trustees may prepare scheme**

9. (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 10 amended

8. (1) Section 10 (1) (b) of the principal Act is deleted and the following paragraph is substituted —

“

- (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.

”.

(2) After section 10 (1) of the principal Act the following subsection is inserted —

“

- (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.

”.

Section 10A inserted

9. After section 10 of the principal Act the following section is inserted —

“

Attorney General may approve certain schemes

10A. (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.

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(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.

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Section 12 amended

10. Section 12 of the principal Act is amended by deleting “prepared under this Part” and substituting the following —

“

in relation to which an application has been made to the Court under section 10 (2)

”.

Section 14 repealed and a section substituted

11. Section 14 of the principal Act is repealed and the following section is substituted —

“

Expenses of scheme

14. (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.

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Section 16 amended

12. Section 16 of the principal Act is amended by inserting after “the approval” the following —

“ by the Court ”.

Section 18 amended

13. (1) Section 18 (1) of the principal Act is amended —

(a) by inserting after “the Court” in both places where it occurs the following —

“ or the Attorney General ”; and

(b) in paragraph (d) by deleting “the provisions of section seventeen of this Act,” and substituting the following —

“ sections 10A (10) and 17, ”.

(2) Section 18 (2) of the principal Act is amended by inserting after “the Court” the following —

“ or the Attorney General ”.

Section 19 amended

14. Section 19 of the principal Act is amended by inserting after “the Court” the following —

“ or the Attorney General ”.

Section 20 amended

15. Section 20 (4) of the principal Act is amended by deleting “twenty pounds.” and substituting the following —

“ \$5 000. ”.

Section 21 amended

16. Section 21 (1) of the principal Act is amended by inserting after “by the Court” in both places where it occurs the following —

“ or the Attorney General ”.

Part V added

17. After Part IV of the principal Act the following Part is added —

“

PART V — REGULATIONS

Regulations

22. 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.

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