

## CHARITABLE TRUSTS.

11° Elizabeth II., No. LXXXII.

---

No. 82 of 1962.

---

**AN ACT to amend the Law relating to Charitable Trusts.**

*[Assented to 6th December, 1962.]*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I.—PRELIMINARY.

Short title.

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

2. This Act is divided into Parts as follows:— Division of Act.

PART I.—PRELIMINARY, ss. 1-4.

PART II.—RECREATIONAL CHARITIES, ss. 5-6.

PART III.—SCHEMES IN RESPECT OF CHARITABLE TRUSTS, ss. 7-19.

PART IV.—SUPERVISION OF CHARITABLE TRUSTS, ss. 20-21.

3. This Act binds the Crown. This Act to bind Crown.

4. In this Act, unless the context otherwise requires,— Interpretation.

“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;

“Master” means the Registrar, Master, and Keeper of the Records of the Supreme Court of Western Australia;

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

#### PART II.—RECREATIONAL CHARITIES.

5. (1) Subject to the provisions 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. General provisions as to recreational and similar trusts, etc. Cf. U.K. Recreational Charities Act, 1958.

(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.

Savings and provisions as to past transactions.

6. (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. (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 the manner directed, and subject to the provisions hereinafter contained, in 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

Property may be disposed of for other charitable purposes.  
Cr. N.Z. Charitable Trusts Act, 1957, s. 32  
U.K. Charities Act, 1960, s. 13.

be disposed of for some other charitable purpose, or a combination of such purposes, in the manner directed, and subject to the provisions hereinafter contained, in 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 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.

Extension of powers or alteration of mode of administration of trust.  
N.Z. *ibid.* s. 33.

8. (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 the manner directed, and subject to the provisions hereinafter contained, in 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.

9. Where the trustees of any property or income, to which the provisions of this Part apply, wish it to be dealt with subject to this Part, they may prepare or cause to be prepared, in accordance therewith, a scheme for the disposition of the property or income and for extending or varying the powers of the trustees or for prescribing or varying the mode of administering the trust.

Trustees  
may prepare  
scheme.  
N.Z. *ibid.*  
s. 34.

10. (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—

Scheme  
to be laid  
before  
Attorney  
General.  
N.Z. *ibid.*  
s. 35.

- (a) may remit the proposed scheme to the trustees for consideration of any amendments he may suggest; and
- (b) shall report on the scheme as finally submitted by the trustees after they have considered such amendments (if any) as are suggested by the Attorney General, and shall deliver the report to the trustees.

(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.

Scheme to be  
advertised.  
N.Z. *ibid.*  
s. 36.

11. (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 Master, the trustees, and the Attorney General not less than seven clear days before the date proposed for the hearing.

Opposition  
to scheme.  
N.Z. *ibid.*  
s. 37.

12. Any person wishing to oppose a scheme prepared under this Part 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 Master and the trustees and the Attorney General.

Administra-  
tion of  
schemes.  
N.Z. *ibid.*  
s. 51 (2).

13. 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 Act, 1927; or
- (c) the Public Trustee or any trustees who could be appointed under the Trustees Act, 1962.

14. Any scheme prepared and approved under this Part may provide that all reasonable expenses of or incidental to preparing, perusing, and advertising the scheme, and of and incidental to applying to the Court for approval of the scheme, shall be paid out of, and be a charge upon, the property or income or money affected.

Expenses of scheme.  
N.Z. *ibid.*  
s. 52.

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

Jurisdiction of Court in respect of schemes.

- (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.

N.Z. *ibid.*  
s. 53.

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

Approval of scheme or refusal of Court to approve scheme to be gazetted.  
N.Z. *ibid.*  
s. 54.

17. 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.

Power to make an order notwithstanding non-compliance with procedural requirements.  
N.Z. *ibid.*  
s. 55.



Restrictions  
on approval  
of schemes  
N.Z. *ibid.*  
s. 56.

18. (1) A scheme shall not be approved by the Court under this Part, unless the Court 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 the provisions of section seventeen of this Act, the requirements of this Part have been complied with in respect of the scheme.

(2) A refusal of the Court 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.

Holder of  
property to  
transfer it in  
accordance  
with scheme.  
N.Z. *ibid.*  
s. 59.

19. Where any scheme approved by the Court 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.

#### PART IV.—SUPERVISION OF CHARITABLE TRUSTS.

Inquiries into  
condition  
and man-  
agement  
of charities.  
N.Z. *ibid.*  
s. 58.

20. (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 twenty pounds.

21. (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 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);

Proceedings to enforce or vary charitable trusts or to require a new scheme.  
N.Z. *ibid.*  
s. 60.

- (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 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.

---