

Western Australia

Charitable Trusts Amendment Act 2011

As at 02 May 2011

No. 9 of 2011

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Charitable Trusts Amendment Act 2011

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Western Australia

Charitable Trusts Amendment Act 2011

No. 9 of 2011

An Act to amend the *Charitable Trusts Act 1962*.

[Assented to 2 May 2011]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Charitable Trusts Amendment Act 2011*.

2. Commencement

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

3. Act amended

This Act amends the *Charitable Trusts Act 1962*.

4. Part VA inserted

After Part IV insert:

**Part VA — Gifts by certain trusts for
philanthropic purposes**

22A. Terms used

In this Part —

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

eligible recipient means a deductible gift recipient within the meaning of that term in the *Income Tax Assessment Act 1997* (Commonwealth), whether or not the deductible gift recipient is a charity at law or (without limitation) is established for a charitable purpose or purposes;

prescribed trust means —

- (a) a fund referred to in item 2 of the Table in section 30-15 of the *Income Tax Assessment Act 1997* (Commonwealth); 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 the commencement day;

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

22B. 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 money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.

22C. 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 money, 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 money, 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.
- (3) Subsection (1) does not apply to the trustees of a prescribed trust unless there is in force a declaration, substantially to the effect of the form in Schedule 1, for the prescribed trust.
- (4) For the purpose of making a declaration under this section, the form in Schedule 1 may be modified so as to limit the application of the declaration to a stated eligible recipient or stated class of eligible recipients.
- (5) If the declaration made for a prescribed trust is so limited, subsection (1) in its application to the prescribed trust has effect only in relation to the stated eligible recipient or stated class of eligible recipients.
- (6) The trustees must ensure that the declaration, or a certified copy of it, is retained with the records of the prescribed trust.
- (7) The trustees are not under a duty to make a declaration under this section, nor are the trustees in breach of a duty in making a declaration under this section.

22D. Ancillary provisions

- (1) In this section —
prescribed power, in relation to a prescribed trust, means —
 - (a) a power referred to in section 22B included in the trust instrument; or
 - (b) the power referred to in section 22C as applying to the prescribed trust.
- (2) This Act applies to a prescribed trust as if the prescribed power were a power exercisable for a charitable purpose.

- (3) Without limiting subsection (2) —
- (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
 - (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 payment or application of the trust property or the trust income, or any part of either of them, 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.
- (4) The provision, before the commencement day, by the trustees of a prescribed trust of money, property or benefits to or for an eligible recipient or for the establishment of an 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.

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- (5) Subsection (4) applies despite anything to the contrary in the trust instrument.
- (6) The inclusion of a power referred to in section 22B in the trust instrument of a prescribed trust before the commencement day is taken to be, and always to have been, validly included.

5. Schedule 1 inserted

After section 22 insert:

Schedule 1 — Declaration by trustees

[s. 22C]

The trustees of the [*insert name of trust*], after having regard to the effect of this declaration (including its effect on the liability of the trustees to income tax), declare that the power conferred by the *Charitable Trusts Act 1962* section 22C to provide money, property or benefits to or for an eligible recipient, or for the establishment of an eligible recipient, within the meaning of section 22A of that Act, is approved as a power that the trustees for the time being of the [*insert name of trust*] are authorised to exercise.

Deed dated

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