

Queensland



ANNO TRICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 72 of 1981

An Act to amend the Trusts Act 1973–1979 in certain
particulars

[ASSENTED TO 7TH OCTOBER, 1981]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Trusts Act Amendment Act 1981*.

(2) In this Act, the *Trusts Act 1973-1979* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Trusts Act 1973-1981*.

2. Amendment of s. 5. Interpretation. Section 5 of the Principal Act is amended by in subsection (1)—

(a) inserting before the definition "authorised investments" the following definition:—

"apart from this Act", when used in relation to land of which there is no trustee, does not include the Public Trustee, or a trustee appointed pursuant to section 12 or section 80 of this Act, or in whom the trust property is vested pursuant to section 16 or section 90 of this Act;";

(b) omitting the definition "Public Curator" and substituting the following definition:—

"Public Trustee" means The Public Trustee of Queensland constituted by the *Public Trustee Act 1978*;";

(c) omitting from the definition "trustee corporation" the word "Curator" and substituting the word "Trustee".

3. Amendment of s. 6. Exercise of powers. Section 6 of the Principal Act is amended by—

(a) numbering the existing section as subsection (1) and therein omitting subsection (c) and substituting the following subsection:—

"(c) in respect of any land or other trust property not hereinbefore provided for by the trustee (if any) of that land or other trust property;";

(b) inserting at the end thereof the following subsections:—

"(2) Where a trustee has, whether before or after the commencement of this Act, done any act which might lawfully have been done with the prior approval of the Court or pursuant to a prior order of the Court conferring power under this Act to do such act, the Court may—

(a) on the application of any trustee or person interested;

(b) after notice to such person or persons (if any) as to the Court may seem requisite; and

(c) on such terms or conditions as to the Court may seem appropriate,

make an order granting approval or conferring power under this Act to do such act, and may make such order retrospective to any prior date or period as to the Court seems fit.

(3) An order made pursuant to subsection (2) shall, subject to any term or condition imposed by the Court, have the same force and effect as if the approval had been obtained or the power conferred before the doing of the act referred to in the order.”

4. Amendment of s. 7. Exercise of powers by statutory trustee. Section 7 of the Principal Act is amended by—

(a) omitting subsection (2);

(b) omitting from the beginning of the remaining subsection the expression and figure “(1)”.

5. New s. 7A. Effect of exercise of powers. The Principal Act is amended by inserting after section 7 the following section:—

“**7A. (Cf. S.L.A. s. 25) Effect of exercise of powers.** (1) The exercise by a trustee of any power under this Act shall—

(a) to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act; and

(b) subject to the requirements of any other Act,

be effectual to dispose of any property thereby intended to be disposed of and to discharge the property from—

(i) any limitations, restrictions, powers and provisions; and

(ii) any estates, interests or charges,

to which the property, by reason of its character as such trust property, is or might otherwise become subject.

(2) Nothing in this section affects—

(a) any estate, interest or charge to which the property has or may become subject otherwise than by reason of its character as such trust property;

(b) any estate, interest, charge, or right in or in respect of the property granted or created—

(i) before the date of the disposition referred to in subsection (1); and

(ii) by a person referred to in section 6 or by any predecessor in title of such person.

(3) The exercise by a trustee of any power under this Act or of any like power conferred by the trust instrument—

(a) shall not occasion any forfeiture;

(b) shall not, except as provided by this Act, be capable of being restrained, prohibited, prevented or impaired by any provision of or limitation in, any contract, covenant, settlement, will, assurance or other instrument.

(4) In this section, “dispose of” shall include any sale, exchange, partition, lease, mortgage, transfer or charge and the creation or grant of any right in or in respect of property.”.

6. Amendment of s. 8. Application to Court to review acts and decisions. Section 8 of the Principal Act is amended by in subsection (1)—

(a) inserting after the words “trust property” the words “or who has a right of due administration in respect of any trust”; and

(b) inserting after the words “conferred by this Act” the words “or by law”.

7. Amendment of s. 11. Limitation of the number of trustees. Section 11 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

“(3) Nothing in this section shall apply—

(a) to property vested or to be vested in trustees for charitable purposes; or

(b) to property vested or to be vested in trustees where the Minister for Justice and Attorney-General has given a certificate in writing that he approves of the number of trustees in whom the property is or is to be vested.”.

8. Amendment of s. 12. Power of appointing new trustees. Section 12 of the Principal Act is amended by—

(a) in subsection (2) in paragraph (c) inserting after the word “but” the words and expression “(except where only one trustee was originally appointed or where the trust instrument otherwise provides)”;

(b) in subsection (5) inserting after the words and expression “provides to the contrary; but” the words and expression “(except where the Minister for Justice and Attorney-General has given a certificate in writing that he approves the appointment of the additional trustees)”;

(c) inserting after subsection (9) the following subsection—

“(10) In this section the term “trustee corporation”—

(a) includes the Public Trustee of another State, or a person in that State discharging functions similar to the Public Trustee of this State;

(b) includes a trustee corporation authorised by the laws of another State to administer the estate of deceased persons and other trust estates.”.

9. Amendment of s. 15. Vesting of trust property in new and continuing trustees. Section 15 of the Principal Act is amended by in subsection (4) omitting the word “Curator” wherever it occurs and substituting the word “Trustee”.

10. Amendment of s. 16. Devolution of trust assets and trust powers upon death. Section 16 of the Principal Act is amended by—

(a) in subsection (8) omitting the words and figures “section 56A of the *Public Curator Act 1915–1971*” and substituting the words and figures “section 62 of the *Public Trustee Act 1978*”;

(b) omitting subsection (9) and substituting the following subsection:—

“(9) In this section—

(a) the expression “trust property” includes any property vested in the trustee as mortgagee; and

(b) the term “trustee” does not include a personal representative as such.”;

(c) omitting the word “Curator” wherever it occurs in that section and substituting the word “Trustee”.

11. Amendment of s. 17. Devolution of mortgage on death. Section 17 of the Principal Act is amended by—

(a) omitting the word “Curator” wherever it occurs in that section and substituting the word “Trustee”; and

(b) in subsection (3) omitting the words and expressions “section 56 of the *Public Curator Act 1915–1971*” and substituting the words and expressions “section 61 of the *Public Trustee Act 1978*”.

12. Amendment of s. 21. Authorised investments. Section 21 of the Principal Act is amended by in subsection (1) in paragraph (e)—

(a) in subparagraph (i) omitting the word “term”;

(b) omitting the word “and” where it occurs after subparagraph (ii);

(c) inserting the word “and” after subparagraph (iii); and

(d) inserting after subparagraph (iii) the following subparagraph:—

“(iv) on the security of a commercial bill of exchange accepted by a bank;”.

13. Amendment of s. 22. Power to purchase dwelling house. Section 22 of the Principal Act is amended by inserting after subsection (5) the following subsection:—

“(6) For the purpose of this section the expression “land in fee simple” shall be deemed to include Crown land leased in perpetuity or for a term of not less than thirty years and conferring the right to reside on the land leased.”.

14. Amendment of s. 31. Application of Part. Section 31 of the Principal Act is amended by in subsection (3) omitting the words and figures “subsection (1) of section 32” and substituting the words and figures “section 32 (1), other than the power conferred by section 32 (1) (d).”.

15. Amendment of s. 44. Power to compound liabilities. Section 44 of the Principal Act is amended by in paragraph (d) inserting after the word “accept” the expression and words “, make or give”.

16. Amendment of s. 52. Audit. Section 52 of the Principal Act is amended by in subsection (3) omitting the word “Curator” and inserting the word “Trustee”.

17. Amendment of s. 61. Power to apply income for maintenance, etc., and to accumulate surplus during minority. Section 61 of the Principal Act is amended by inserting after subsection (6) the following subsection:—

“(7) The provisions of subsection (2) of this section do not apply where, and to the extent that, a contrary intention is expressed in the trust instrument, if any.”

18. Amendment of s. 90. Effect of vesting order. Section 90 of the Principal Act is amended by—

(a) in subsection (1) omitting the words “as trustees”;

(b) inserting after subsection (1) the following subsection:—

“(1A) Such property shall vest in the persons named as trustees or otherwise as appears from the order.”;

(c) in subsection (4) omitting the word “trust” and the words “as trustees”; and

(d) in subsection (6) inserting after the words “vesting order” the words “as trustee”.

19. Repeal of and new s. 106. Proceedings in case of breach of charitable trust. The Principal Act is amended by repealing section 106 and substituting the following section:—

“**106. Proceedings in case of charitable trust.** (1) The Court may upon application under this section by an order in respect of any charitable trust—

(a) give directions in respect of the administration of the trust;

(b) require any trustee to carry out the trust, or to comply with a scheme, if any; and

(c) require any trustee to satisfy his liability for any breach of the trust.

(2) An application under this section may be made—

(a) by the Attorney-General or person authorised by him;

(b) by the charity, or any trustee of the trust; and

(c) by any person interested in the due administration of the trust.

(3) Notice of the application shall be given to the Attorney-General, and to the trustee of the trust and to such other person as the Court directs.

(4) On any such application the Court may make such order as to costs and otherwise as may be just.

(5) In this section—

(a) “charity” means any institution, whether or not incorporated, which is established for charitable purposes; and

(b) “charitable trust” means any property held in trust for a charitable purpose.”.