

LEGACY TRUST FUND BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Bill

The objective of the Bill is to enable certain funds held by the Department in the Legacy Trust Fund to be used for the benefit of the vision impaired free of any legal ambiguity.

Reasons for the Bill

The Bill will enable Disability Services Queensland to use funds that have accumulated over a period of in excess of 100 years in an account styled the "Legacy Trust Fund" by disbursing them to organisations catering to the needs of the vision impaired. The Department currently holds an amount in excess of \$300,000 in the account.

In its history, the Legacy Trust Fund has been managed by various government departments through the auspices of a series of institutions, including the Queensland Industrial Institute for the Blind and the Queensland Blind Industrial Centre. The sources of funds deposited into the account have been mixed, although it is accepted that a major proportion of individual deposits has come from legacies. In those cases, the testators would have expressed the wish that all or part of their estates be used for the benefit of the vision impaired - or at least those persons for whom the above institutions were set up and run. The Department is unable to ensure that their wishes have been fulfilled because the records stretching back over 100 years are incomplete.

There were other sources of funds including gifts direct from the public, some revenue generated by the institutions staffed by people with a vision impairment and at least one substantial donation from the Government.

The Bill will vest the property in funds currently in the departmental account in the State of Queensland and enable the Minister to pay them out to organisations benefiting the vision impaired. As such, there will be no additional administrative cost compared to the previous system which was

one of making payments from time to time to organisations on the assumption that the department was administering a trust for charitable purposes.

Alternatives to the Bill

It is impossible to deal with the funds held in the Departmental account in the alternative way of applying to the Courts for directions as to the management of the funds under the *Trusts Act 1973* because the fund itself is not a trust nor can the quantum of individual sums held on trust be determined.

Estimated Cost for Government Implementation

There will be no additional costs as implementation of the Bill will allow the Department to continue carrying out an administrative function.

Consistency with Fundamental Legislative Principles

Section 4(3) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceedings or prosecution without adequate justification. The Bill will bar legal actions against the State in respect of any dealing with money in the fund, at any time. This breach is considered to be justified as the State will be unable to use the money for the benefit of any person at all if it continues to be at risk of legal liability in relation to any duties it has had imposed on it over time. Since becoming aware of this risk the Department has imposed a voluntary freeze on the fund. However, this decision itself has the potential to place the State at some legal risk as it could be argued that the Department may be breaching its obligations by failing to comply with individual bequests during this period.

Section 4(3)(i) of the *Legislative Standards Act 1992* provides further that whether a Bill has sufficient regard to rights and liberties of individuals depends on whether for example the legislation "provides for compulsory acquisition of property only with fair compensation". As a matter of technicality, the Bill provides for money which is presently in the control of Disability Services Queensland in the practical sense to be vested in the State of Queensland. Although there is a possibility that some persons or organisations may claim entitlement to a proportion of the fund on the

basis of a specific trust, the Department has been unable to find any relevant records despite an extensive search. It is therefore considered appropriate to disburse the funds according to a set of legislative principals that will reflect, so far as is possible, the primary wishes that may have been expressed in any specific bequests, that is for the benefit of persons with a vision impairment. Given the practical impossibility of discerning the exact purpose of bequests and donations over a period of 100 years this scheme could legitimately be said to constitute fair compensation should the issue arise.

Consultation

- *Community*

It is anticipated that the fund will be disbursed to community organisations benefiting people with a vision impairment including the Talking Book Library of Queensland and Vision Queensland.

- *Government*

Consultation has occurred with the Department of the Premier and Cabinet; Queensland Treasury; the Department of Justice and Attorney-General as well as the Public Trustee of Queensland.

NOTES ON PROVISIONS

Clause 1 provides that the short title of the Act will be the *Legacy Trust Fund Act 2001*.

Clause 2 states that the Act will commence on a day to be fixed by proclamation.

Clause 3 provides for definitions of particular words to be used in the Act to be set out in the dictionary in the schedule.

Clause 4 provides that the Act is to apply to the amount standing to the credit of the fund immediately before the commencing day. If there is an inconsistency between this Act and the *Trusts Act 1973* then this Act shall prevail.

Clause 5 provides that on and after the commencing day the fund money is a controlled receipt of the department for this Act and any other Act.

Clause 6 provides the purposes for which the Minister may spend all or part of the fund money.

Clause 7 provides a bar to the taking of legal action against the State for the manner in which fund money has been dealt with.