



Charitable Funds Act 1958

Current as at 23 September 2013—revised version

Reprint note

Powers under the *Reprints Act 1992* have been used in this reprint to bring the legislation into line with current drafting practice.

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Queensland

Charitable Funds Act 1958

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Charitable Funds Act 1958

An Act to make alternative provision for the extension of the charitable purposes for which certain funds may be applied, and for the disposition and appropriation of such funds for and to charitable purposes other than those for which they were established, and for other purposes

1 Short title

This Act may be cited as the *Charitable Funds Act 1958*.

2 Meaning of terms

In this Act—

Central Region means the Central Region of the Supreme Court.

Note—

The Central Region is declared under the *Supreme Court of Queensland Act 1991*.

certifying officer means any certifying officer appointed under and for the purposes of this Act.

charitable purpose means every purpose which in accordance with the law of England is a charitable purpose, and, without limiting or otherwise affecting the foregoing, includes all or any of the following—

- (a) the supply of help, aid, relief, assistance, or support howsoever to any persons in distress (including, but without limiting the generality thereof, the supply of the physical wants of any such persons);
- (b) the education or instruction (spiritual, mental, physical, technical, or social) and the reformation, employment, or care of any persons;

- (c) any public purpose (whether of any of the purposes before enumerated or not) being a purpose in which the general interest of the community or a substantial section of the community (at large or in a particular locality), as opposed to the particular interest of individuals, is directly and vitally concerned;
- (d) the construction, carrying out, maintenance, or repair of buildings, works, and places for any of the purposes aforementioned;
- (e) any benevolent or philanthropic purpose (whether of the purposes before enumerated or not);
- (f) any analogous purpose declared either generally or in the particular case for the purposes of this Act by the Governor in Council by order in council published in the gazette to be a charitable purpose.

collection, in relation to any fund, means the receiving of any property for the fund by all or any of the following means—

- (a) voluntary contributions;
- (b) the sale of any property voluntarily contributed;
- (c) lotteries, carnivals, fetes, entertainments or any other projects conducted for the raising of the fund by any manner of voluntary contribution (whether of the like nature or not).

contributor, in relation to any fund, includes every contributor who contributes or has contributed to the fund (whether by gift made on any 1 or more occasions inter vivos or by will or by the purchase of any ticket or share in any lottery or by the payment of admission to any entertainment conducted for the raising of the fund or by other manner of voluntary contribution).

Far Northern Region means the Far Northern Region of the Supreme Court.

Note—

The Far Northern Region is declared under the *Supreme Court of Queensland Act 1991*.

fund means any fund or part of a fund raised by collection for any charitable purpose and at any material time consisting of any property resulting from collection or from the management of the fund or from partly one and partly the other and, without limiting or otherwise affecting the foregoing, includes the fund raised following an accident which occurred on the Tollbar Road near Toowoomba on 31 January 1955, and known as the ‘Australia Day Truck Disaster Fund’, but does not include any fund which is not raised wholly or partly by public voluntary contribution.

Northern Region means the Northern Region of the Supreme Court.

Note—

The Northern Region is declared under the *Supreme Court of Queensland Act 1991*.

persons, in relation to any charitable purpose, includes children as well as persons of a special class, whether of a localised section of the community or otherwise or whether a substantial body of the public or not, any particular individuals, and any fluctuating body of persons of a special class or of particular individuals.

persons in distress, in relation to any charitable purpose, includes diseased, sick, aged, impotent, bodily or mentally infirm, incurable, poor, needy, destitute, helpless and unemployed persons, and any person in distress (whether of the classes before enumerated or not) by reason of the death or disability of another or others by whom they were wholly or partly maintained, or by reason of fire, flood, drought or other catastrophe, and any dependants of any such persons.

property, in relation to any fund, means real and personal property of every description, and, without limiting or otherwise affecting the foregoing, includes goods, money, and securities for money.

trustees, in relation to any fund or any property in any fund, includes the holders for the time being of the fund or, as the case may be, property and, where necessary, every person for the time being having or exercising the management or

control, either solely or jointly with another or others, of or over the fund or, as the case may be, property.

3 Application of this Act

- (1) This Act shall apply to funds raised before or after, or partly before and partly after the commencement hereof.
- (2) The provisions of this Act shall be in addition to and not in substitution for or diminution of—
 - (b) any other Act or any enactment, order in council, regulation or rule making provision with respect to the disposal for or appropriation to any purpose, wholly or in part, of any fund or whereunder any fund or any part or residue thereof may be disposed of for or appropriated to any purpose;
 - (c) any rule of law, practice or procedure, or usage or custom.
- (3) Nothing in this Act shall limit or otherwise affect the jurisdiction of the Supreme Court or of any judge in relation to any fund, and if in relation to any fund, or any part or residue thereof any scheme is approved or any order is made under this Act by a judge of the Supreme Court or any scheme is certified under this Act by a certifying officer, then any proceeding subsequently in relation to the fund, part or residue may be taken otherwise than under this Act or, if appropriate provision is made by this Act, otherwise than under this Act or under this Act.

4 Certifying officers

- (1) The Governor in Council may from time to time appoint 1 or more certifying officers for the purposes of this Act.
- (2) A certifying officer may be a public service employee.
- (3) Any appointment as certifying officer may be published in the gazette and thereupon shall be judicially noticed.

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- (4) A certifying officer shall have such functions, authorities, powers and duties as are conferred or imposed upon the officer by this Act.

5 When purposes may be altered and funds may be appropriated under this Act

In any case where—

- (a) it becomes impossible or impracticable or inexpedient to carry out the purpose or all or any of the purposes for which a fund was established or is held; or
- (b) the property available in the fund proves inadequate to carry out such purpose or all or any of such purposes; or
- (c) such purpose or all or any of such purposes has or have been already effected; or
- (d) the property available in the fund is more than sufficient to meet all reasonable requirements for such purpose or all or any of such purposes; or
- (e) such purpose has or all or any of such purposes have ceased to exist; or
- (f) such purpose is or all or any of such purposes are uncertain or cannot be identified or is or are not sufficiently defined; or
- (g) such purpose is or all or any of such purposes are illegal;

then under and subject to the provisions of this Act, the fund or any part or residue thereof, may be disposed of for or appropriated to some other charitable purpose or purposes, or, in any case referred to in paragraph (f), some specified charitable purpose or purposes.

6 Trustees may prepare and submit schemes

- (1) Where, in any case referred to in section 5, the trustees or a majority of the trustees of the fund or of any property in the fund are desirous that the same shall be dealt with under and subject to this Act, they may prepare or cause to be prepared, and submit or cause to be submitted to a certifying officer, a

scheme for dealing with the fund or any part or residue thereof under and in accordance with this Act.

(2) **When contributors may prepare and submit schemes**

In any case referred to in section 5, the trustees or a majority of the trustees or any beneficiary of or contributor to the fund, or, where the Minister is of the opinion that it is in the public interest so to do, any person authorised in writing in that behalf by the Minister may—

- (a) where the amount or value of the property in the fund in question does not exceed \$1200—prepare or cause to be prepared, and submit or cause to be submitted to a certifying officer, a scheme for dealing with the fund or any part or residue thereof under and in accordance with this Act; and
- (b) where the amount or value of the property in the fund in question exceeds \$1200—proceed in the manner set forth in section 7.

7 Convening meeting of contributors

- (1) The moving trustee, contributor, beneficiary or person so authorised by the Minister (*the convener*) may call together a meeting of the contributors by advertisement in the following manner—
 - (a) the advertisement shall be inserted in 1 or more of the newspapers circulating in the locality within which the fund was as regards the State wholly or mainly raised by collection;
 - (b) the advertisement shall be so inserted at least 3 times at an interval of not less than 7 days between the insertions;
 - (c) the day and place of the meeting shall be mentioned therein, the day not to be less than 30 days from the date of the first advertisement, and the place being a place in the locality within which the fund was as regards the State wholly or mainly raised by collection;

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- (d) the advertisements shall contain a brief statement of the reasons why it is proposed that the fund or any part or residue thereof should be dealt with under and in accordance with this Act and shall distinctly state how it is proposed to so deal with it;
 - (e) the advertisement shall state whether it is proposed to have appointed a new trustee or new trustees to act in substitution for the existing trustee or trustees or whether it is proposed to have appointed an additional trustee or additional trustees to act with the existing trustee or trustees;
 - (f) the advertisement shall state that contributors who by letter addressed to the convener at the address specified or who by writing handed to the person elected chairperson of the meeting, previously establish their claim to vote as contributor to the satisfaction of the claim committee may vote by proxy, and shall also contain a reference to the provisions of subsection (2).

(2) **Subsequent notice**

Any contributor may give notice by advertisement in accordance with subsection (1)(a) not less than 7 days before the day fixed for the meeting that the contributor will propose thereat some charitable purpose or purposes other than that or those mentioned in the advertisement convening the meeting, for the application of the fund, part or residue in question, and such other purpose or purposes shall be distinctly specified in such notice.

(3) **Proceedings at meetings**

At the meeting held pursuant to the advertisement convening the meeting, and at any adjournment of that meeting—

- (a) no business shall be, or be deemed to have been transacted unless a quorum of contributors is present at the time when the meeting proceeds to business; 7 contributors or $\frac{1}{3}$ of the total number of contributors, whichever is the lesser number, shall be a quorum;
- (b) the proceedings shall be conducted in the following manner—

- (i) the majority of the persons present claiming to be contributors shall choose a chairperson: however, if the person so chosen does not establish his or her claim to vote as a contributor to the satisfaction of the claim committee, the majority of the voting contributors shall choose another person present to be chairperson;
- (ia) the chairperson shall have an original vote only and, in the event of an equality of votes, any question shall be deemed to be resolved in the negative;
- (ii) any 3 persons present claiming to be contributors then and there chosen by a majority of the persons present and claiming to be contributors, or, if the majority of the persons present and claiming to be contributors so decide, the convener and any 2 other persons present claiming to be contributors then and there so chosen, shall form a claim committee for determining the claims of persons to vote as contributors;
- (iii) contributors who by letter addressed to the convener or who by writing handed to the chairperson of the meeting establish their claim to vote may vote by proxy on all questions before the voting contributors;
- (iv) the claims to vote at the meeting having been determined, a list shall be made by the claim committee of the voting contributors, to which may be added by such committee the names of any persons who establish their claims before the conclusion of the proceedings;
- (v) the majority of the voting contributors shall first decide whether or not a scheme shall be prepared and submitted under this section for dealing with the fund or any part of residue thereof under and in accordance with this Act;
- (vi) if it is decided that such a scheme shall be prepared and submitted, then so far as concerns the purpose

to which it is proposed to have the fund or any part or residue thereof applied—

- (A) if notice has been given under subsection (2) by any contributor of a proposed purpose different from that contained in the advertisement of the convener, the vote of the voting contributors shall be taken on all the proposed purposes at once, and that proposed purpose shall be declared to be adopted for which the greatest number of votes is given;
- (B) any voting contributor may propose at the meeting that the purpose shall be one combined of any of the advertised purposes or any portions thereof, and the meeting may take the same into consideration and vote thereupon at the same time as upon the advertised propositions;
- (C) if any voting contributor present at the meeting proposes some other purpose which has not been duly advertised, the voting contributors may, if they think fit, abstain from voting on the advertised purposes and adjourn to a future day not less than 10 days thereafter;
- (D) the proposer of such new purpose as last aforesaid shall, not less than 7 days before the date to which the meeting is adjourned, distinctly specify by notice by advertisement, in accordance with subsection (1)(a), that purpose which the proposer intends to propose at such adjourned meeting;
- (E) at the adjourned meeting all the purposes which have been duly advertised shall be put together to the vote, and that one shall be declared to be adopted for which a majority of votes is then given;

(vii) after the determination by the voting contributors of the purpose to which the fund or part or residue is to be applied, the voting contributors shall proceed to choose a scheme committee of 3 voting contributors.

(4) Preparation and submission of scheme by scheme committee

The scheme committee shall, within 2 months from the date of the meeting at which they were appointed, prepare or cause to be prepared, and submit or cause to be submitted to a certifying officer, a scheme for the application of the fund or the part or residue thereof pursuant to the resolution of the meeting, together with a copy certified by the chairperson of the meeting of the resolution adopting the particular purpose or purposes, and also copies of the other proposed purposes as advertised.

8 Schemes may provide for new trustees

(1) Any scheme submitted or approved or certified under this Act may provide for the appointment of a new trustee or new trustees to act in substitution for the existing trustee or trustees, or for the appointment of an additional trustee or additional trustees to act with the existing trustee or trustees.

(2) Information to accompany scheme submitted to certifying officer where fund exceeds \$1200

Where the amount or value of the property in the fund exceeds \$1200, a scheme submitted under this Act to a certifying officer shall, if the certifying officer so requires, be accompanied by full information of all the facts upon which it is proposed to apply the fund, part or residue, and also by copies of any instruments necessary to explain the scheme so prepared.

(2A) Powers and duties of certifying officer etc.

The certifying officer shall in relation to every such scheme have the following powers and duties—

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- (a) the officer may from time to time remit the proposed scheme to the trustees or, as the case may be, scheme committee for amendment if the officer considers that it will not properly carry out the purposes contemplated or, in the case of a scheme submitted by a scheme committee, that it will not properly carry into effect the resolution of the contributors, or in either of the 2 cases, that it is in any respect contrary to law or is not within the objects and purposes of this Act, and in so doing shall state in writing the objections which the officer entertains to the scheme as proposed;
- (b) the officer may report on the scheme submitted and in such event the officer shall lay such report together with the scheme before a judge of the Supreme Court, or the officer may decline to make any such report and in such case allow the scheme to be laid before a judge aforesaid;
- (c) however, where the certifying officer has declined to make any such report, if the scheme is laid before a judge then the judge may refer the scheme to the certifying officer for report and the certifying officer in reporting to the judge may consider any alternative proposal which might have been made in relation to the scheme.
- (3) Every report by the certifying officer on any such scheme, and such scheme, with or without such a report, shall be filed in the office of the registrar of the Supreme Court at Rockhampton, Townsville or Cairns, according as the fund was wholly or mainly raised as regards the State within the Central Region, Northern Region or Far Northern Region and in all other cases, in the office of the registrar of the Supreme Court at Brisbane.
- (4) **No fee for inspection by public**
- Such report and scheme or the scheme alone if there is no report, shall be open to inspection by the public without any fee or charge.

(5) **Advertisement of submission to judge of scheme**

Notice of the submission under this Act to the judge of the Supreme Court of any scheme shall, if the judge so orders, be publicly advertised as ordered.

9 When certifying officer may prepare and submit schemes

- (1) Where at any time in any case referred to in section 5 in which the amount or value of the property in the fund exceeds \$1200—
- (a) it is made to appear to the certifying officer that no trustee or beneficiary of or contributor to the fund can be ascertained or found or is able and willing to proceed in the manner set forth in section 7; or
 - (b) at a meeting of contributors convened under section 7, the majority of the persons present claiming to be contributors to the fund decide that the fund or the part or residue thereof shall be so dealt with; or
 - (c) it is made to appear to the certifying officer that the voting contributors, who determined at a meeting of contributors the purpose to which the fund or part or residue is to be applied, were not reasonably representative of the contributors, or that the meeting was not duly convened, or that the proceedings thereat were not conducted in accordance with this Act, or that, by reason of the absence of a quorum or other reason, there was some other irregularity in relation to such meeting; or
 - (d) any beneficiary requests in writing that the fund or the part or residue thereof shall be so dealt with;

a certifying officer, whether in that case a scheme has been submitted to the officer under either section 6(1) or 7(4) or not, may give notice by advertisement in accordance with section 7(1)(a), (b), (d) and (e), that the officer proposes under and in accordance with this Act, to apply to a judge of the Supreme Court for directions as to the administration of the fund, or any part or residue thereof, that the officer invites objections, by letter addressed to the officer, to his or her

proposal from any trustee, beneficiary, or contributor, and specifying the time within which the officer will receive such objections.

- (2) The time specified in the advertisements for the receipt by the certifying officer of such objections shall be as fixed by the certifying officer but shall not be less than 1 month from the date of the first advertisement.
- (3) At any time after the expiration of the time aforesaid, the certifying officer, if no such objections are received, or if any objections are received, then upon giving in each case to the objector written notice of his or her intention so to do by prepaid registered post or certified mail addressed to the objector at the address given by the objector, may apply to a judge of the Supreme Court for directions as to the administration of the fund, and for that purpose may submit to the judge a scheme.
- (4) For the purpose of submitting a scheme under this section or dealing with a fund or any part or residue thereof under and pursuant to section 10, the certifying officer may make such inquiries, by advertisement or otherwise, and may confer or correspond with such persons, as the officer thinks fit, and may prepare or cause to be prepared a scheme.
- (5) The provisions of section 8(3) to (5) shall, with all necessary adaptations, apply with respect to the advertising of notice of, and the making of, the application to the judge of the Supreme Court and the submission to the judge of a scheme under this section.

10 Certifying of scheme where funds are small

- (1) Where at any time in any case referred to in section 5, the amount or value of the property in any fund does not exceed \$1200, whether any scheme is submitted under this Act to a certifying officer or not and whether any scheme in relation to the fund has been previously approved or certified under this Act or otherwise or not, the fund or any part or residue thereof may be dealt with under and pursuant to this section.

- (2) A certifying officer may adopt with or without such modifications as the officer deems fit any scheme under this Act submitted to the officer or the officer may refuse to adopt such scheme.
- (2A) If a scheme under this Act has not been submitted to the certifying officer or the officer refuses to adopt any scheme so submitted, the officer may prepare or cause to be prepared a scheme for dealing with the fund or any part or residue of the fund under and in accordance with this Act.
- (2B) For the purpose of enabling a certifying officer to modify or to prepare or cause to be prepared a scheme, the officer may do any 1 or more of the things prescribed by section 13(2).
- (2C) Moreover a scheme prepared under this section may include any 1 or more of those things.
- (3) Upon the adoption or preparation of the scheme, the certifying officer shall give notice by advertisement in accordance with section 7(1)(a), (b), (d) and (e), that the officer proposes to deal with the fund, part, or residue under and pursuant to this section, that the officer invites objections, by letter addressed to the officer, to his or her proposal from any trustee, beneficiary or contributor, and specifying the time within which the officer will receive such objections.
- (3A) However, the certifying officer may, in his or her discretion, instead of giving notice as aforesaid, give such notice in such form and manner and to such persons as the officer deems fit.
- (4) The time specified in any notice under subsection (3) for the receipt by the certifying officer of objections shall be as fixed by the certifying officer but shall not be less than 1 month from the date of the giving of such notice or, where such notice is given more than once, from the date of the first giving of such notice.
- (5) At any time after the expiration of the time aforesaid, the certifying officer may—
 - (a) refrain from further dealing with the fund, part, or residue under and pursuant to this section; or
 - (b) having had regard to any objections received by the officer, and having made such modifications (if any) of

the scheme as the officer deems fit, and having satisfied himself or herself that the scheme is not contrary to law and is within the objects and purposes of this Act, certify the same; or

- (c) submit the scheme to a judge in accordance with the provisions of section 8 as if the amount or value of the property in the fund in question exceeded \$1200.
- (5A) If the certifying officer certifies the scheme a verified copy thereof and of the certificate shall consequent upon the giving of the notices in accordance with subsections (6A) and (6B) be filed in the office of the registrar of the Supreme Court in accordance with section 8(3).
- (5B) Such copy shall be open to inspection by the public without any fee or charge, and an office copy thereof shall be admissible prima facie as proof of the scheme and certificate.
- (6) A certifying officer shall forthwith notify in the gazette the date on and registry in which the officer has filed the verified copy of the scheme and of the certificate.
- (6A) Notice of the certification of the scheme and containing briefly the rights of identifiable donors under section 20(2) to (2B) shall be advertised by the certifying officer once at least in 1 or more newspapers in accordance with section 7(1)(a).
- (6B) However, the certifying officer may, in his or her discretion, instead of giving notice as aforesaid, give such notice in such form and manner and to such persons as the officer deems fit.
- (7) Without derogating from any other provision of this Act, or of any order of a judge, relating to the disposition or appropriation of any fund or any part or residue thereof, the provisions of section 21 shall apply to a scheme certified under this section by a certifying officer as if the reference therein to a judge were a reference to the certifying officer and the approval of the scheme referred to the certification of the scheme.
- (8) In any case referred to in section 5 the Governor in Council may by order in council provide that any fund the amount or value of the property wherein does not exceed the sum specified in the order in council (being a sum in excess of

\$1200) may be dealt with under and pursuant to this section notwithstanding the provisions of any other section of this Act.

- (9) The Governor in Council may provide, as prescribed by subsection (8), in relation to a particular fund, or to funds included in a specific class of funds, or to funds generally.
- (10) Every fund in respect whereof the Governor in Council makes provision as prescribed by subsection (8) may be dealt with under and pursuant to this section notwithstanding that the amount or value of the property therein exceeds \$1200.
- (11) A reference in this Act (other than in this section) to a fund described as a fund where the amount or value of the property therein does not exceed \$1200 shall include a fund, provision for which is made by the Governor in Council by order in council made under subsection (8).

11 Provisions for costs of scheme

- (1) Provision may be made in any scheme submitted or approved or certified under this Act that all reasonable expenses of all advertising and of publishing notifications (including the advertising of alternative proposals), and of meetings, and of preparing the scheme, and costs shall be a proper charge on the fund or part or residue of the fund the subject of the scheme.
- (2) Such expenses and costs shall be certified by the certifying officer who may refer the matter to the taxing officer of the Supreme Court who shall, upon request made to the taxing officer for the purpose under the hand of the certifying officer, ascertain and certify the proper amount of those expenses and costs.
- (3) The certifying officer shall furnish to the taxing officer such information within the certifying officer's knowledge and belief as the taxing officer requires for the purpose of the reference.

12 Judge of Supreme Court to have jurisdiction

(1) Any judge of the Supreme Court shall have jurisdiction and authority to hear and determine all matters relating to any scheme or application laid before, submitted or made to the judge under this Act, and all proceedings therein shall be had in a summary way, and the judge may decide what persons shall be heard before the judge in support of or in opposition to the scheme or application.

(2) Registrar to obtain directions

The registrar of the Supreme Court shall bring before a judge every scheme and application filed in the registrar's office and which is to be laid before or submitted or made to a judge under this Act, for the purpose of obtaining such directions thereon as the judge deems fit, and the registrar shall then notify those directions to such persons and in such manner as the judge directs.

(3) This section applies so as not to require any scheme certified by a certifying officer pursuant to section 10 to be brought before a judge.

13 Judge may make or refuse an order

(1) The judge may make an order approving any scheme laid before or submitted to the judge under this Act, with or without any modification or variation the judge deems fit, or the judge may refuse to make any such order.

(1A) In either case, (but without derogating from the foregoing), the judge, with or without an application for the purpose, may make in relation to the fund in question or any part or residue thereof such order or orders, either at one and the same time or at different times, as in the judge's opinion will carry out the objects and purposes of this Act as well as giving effect to the general intention of the contributors.

(2) Without limiting the generality of the powers conferred by subsections (1) and (1A), the judge may by order do any 1 or more of the following things—

- (a) define the charitable purpose or purposes for which the fund or any part or residue thereof shall be deemed to have been established;
- (b) extend the charitable purposes for which the fund or any part or residue thereof may be applied;
- (c) direct the appropriation of the fund or any part or residue thereof to such charitable purpose or purposes (other than that or those for which it was established or held) as the judge may specify, or to a combination of any of such purposes;
- (d) direct the disposal of the fund or any part or residue thereof by the existing trustees or by such other persons as the judge may specify for charitable purposes other than those for which it was established or is held or for a combination of any of such purposes;
- (e) appoint a new trustee or new trustees to act in substitution for the existing trustee or trustees or appoint an additional trustee or additional trustees to act with the existing trustee or trustees;
- (f) direct that the fund or any part or residue thereof be administered by the office bearers or trustees for the time being of an institute, society, club or association for the furtherance of some charitable purpose;
- (g) divide, in such proportions as the judge deems fit, the fund, or any part or residue thereof, between different charitable purposes;
- (h) direct the transfer or vesting of all or any of the property in the fund to or in such persons in such manner and for such estate or interest as the judge may direct;
- (i) give such directions in relation to the release or disposal of any right or interest had by any person in the fund or to or in any property in the fund as the judge deems fit;
- (j) specify any part of the fund for all or any of the foregoing purposes;
- (k) give directions on any question relating to the scheme or fund or, as the case may be, part or residue thereof, and

give such directions and authorise such things for giving effect to and enforcing the judge's order and for carrying out the objects and purposes of this Act as the judge deems fit.

- (3) A judge may make such order as to costs of any party to any application or any matter in relation to any scheme under this Act as the judge deems fit.
- (4) Every order made by a judge under this Act shall be filed with the registrar of the Supreme Court where the scheme is filed.

14 Judge may adopt certifying officer's report

Without derogating from the provisions of section 13, where a certifying officer had made a report on a scheme submitted to the officer or which has been referred to the officer by a judge for a report under this Act, the judge before whom the same is laid may adopt such report, and make an order thereon accordingly.

15 No fees payable to registrar

No fees shall be payable to a registrar of the Supreme Court in respect of any application, submission, report, scheme, inspection, order or other proceeding filed or made under this Act.

16 Publication of order of judge

- (1) Notice that a judge has made an order approving of any scheme laid before or submitted to the judge under this Act shall be published in the gazette by the registrar of the Supreme Court in whose office the scheme is filed.
- (2) Notice of the approval of the scheme and containing briefly the rights of identifiable donors under section 20(2) to (2B) shall also be advertised by the said registrar once at least in 1 or more newspapers in accordance with section 7(1)(a).

17 Judge may direct application otherwise than under this Act

Without derogating from the provisions of section 13, in any case where in relation to any fund or any part or residue thereof, a scheme is laid before or submitted to, or any application is made to, a judge of the Supreme Court under this Act, if the judge, having regard as the judge deems fit to the nature, extent and purposes of the fund, to the manner of raising the fund, to costs, and to the public interest, and to any other circumstances, is of the opinion that the fund, or part or residue thereof, could be more conveniently and properly dealt with otherwise than under this Act, the judge may refuse to make any order thereon and may give such directions as the judge deems fit for the making of any other application in relation to the fund.

18 Schemes may be altered and original purpose restored

- (1) Where, under this Act, a scheme with or without any modification or variation has been approved by a judge of the Supreme Court or a scheme has been certified under and pursuant to section 10, the fund the subject of such scheme, or any part or residue thereof, may be disposed of for, or appropriated to some other charitable purpose or purposes, or a combination of the purpose or all or any of the purposes defined in the scheme so approved or certified and some other charitable purpose or purposes, either under and subject to this section or under and subject to any other appropriate provision of this Act, and in any such case the original purpose or purposes may be restored, with or without modification or variation.
- (2) Where the amount or value of the property in the fund exceeds \$1200 an application to a judge for the modification or variation of such a scheme may be made by any of the following persons—
 - (a) any trustee or contributor to the original scheme;
 - (b) any trustee or contributor to the scheme as last approved;

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- (c) any beneficiary;
 - (d) a certifying officer.
- (3) A person shall give notice by advertisement in accordance with section 7(1)(a), (b), (d) and (e) that the person proposes to make such an application to a judge.
- (3A) The day of the application shall be mentioned in the notice, the day not to be less than 30 days from the date of the first advertisement.
- (4) A proposed scheme shall accompany the application and shall be laid before the judge.
- (5) The provisions of section 8(3), (4) or (5) shall, with all necessary adaptations, apply with respect to the advertising of notice of, and the making of, the application to the judge of the Supreme Court and the submission to the judge of a scheme under this section.
- (6) The judge may refer to a certifying officer for investigation and report any application (other than an application by a certifying officer) under this section, and the certifying officer in reporting to the judge may consider any alternative proposal which might have been made in relation to the scheme which was approved.

19 Public trustee may be appointed as trustee

The public trustee may, if the public trustee consents to act, be appointed sole trustee, and shall thereupon, subject to the provisions of the *Public Trustee Act 1978*, act as trustee with respect to the administration of any scheme approved or certified under this Act.

20 Return of contributions

- (1) Subject to subsection (2), in relation to the disposition or appropriation under this Act of any property in any fund the principle, as regards collections, shall be observed that, except where a contrary intention has been expressed by the donor, property received from an identifiable donor (whether

identified in the first place, or being at first anonymous, subsequently proves the donor's identity) shall be taken to have been contributed for the particular and exclusive purpose for which the donor's contribution was solicited and none other, and that there will be a resulting trust in the donor's favour if that purpose fails.

- (2) In any case where under this Act any scheme is approved by a judge of the Supreme Court or is certified by a certifying officer, then any identifiable donor having a resulting trust in the donor's favour, within the time and in the manner provided by subsection (2A), but not afterwards, unless by the direction of a judge to whom an application is made in that behalf before the expiration of the time prescribed by subsection (2A)(a), may demand from the trustees of the fund the amount of the donor's contribution or a rateable proportion thereof out of the residue left after deductions made for reasonable expenses and expenditure in pursuance of the purpose or purposes of the fund, according to the circumstances.
- (2A) Demands under subsection (2) for repayment from the fund of contributions shall be made—
- (a) before the expiration of 30 days from the date of publication of the advertisement (or if more than 1 advertisement, from the date of the first publication) of the notice, required by section 16(2), of the approval by the judge of a scheme or, in the case of a certification of a scheme under and pursuant to section 10, of the notice required by section 10(6A) and (6B);
- (b) by notice in writing received by the certifying officer to whom the scheme was submitted prior to approval or who submitted the scheme for approval or who certified the scheme, as the case may be.
- (2B) Any identifiable contributor having a resulting trust in the contributor's favour and who has made a demand within the time and in the manner provided by subsections (2) and (2A) shall be entitled to be paid out of the fund the amount of the contributor's contribution or a rateable proportion thereof out of the residue left after deductions made for reasonable

expenses and expenditure in pursuance of the purpose or purposes of the fund, according to the circumstances, and the trustees administering the scheme as approved by the judge or, as the case may be, as certified by the certifying officer may make such payment.

(3) **Bona vacantia**

Any interest in any fund which has become *bona vacantia*, shall not be disposed of, appropriated or otherwise dealt with under this Act unless the Minister waives the claim of *bona vacantia*.

21 Diversion of fund etc.

Upon the approval of any scheme or the making of any order under this Act by a judge with respect to the disposition or appropriation of any fund or any part or residue thereof—

- (a) the fund, part or residue shall, in accordance with the scheme and the further directions in that behalf (if any) of the judge be diverted from the purpose or purposes for which it was held and shall be disposed of for, or as the case requires, appropriated to, and held for the purpose or purposes as designated by the scheme or order;
- (b) the persons who before the approval of the scheme or the making of the order were the trustees shall, in accordance with the scheme and the further directions in that behalf (if any) of the judge convey, transfer or pay over all the property in the fund, part or residue, with all profits and interest which may have accrued thereon, in the case where the trustees remain unchanged, to themselves as trustees for the purpose or purposes as designated by the scheme or order, or in the case where any new or additional trustee or trustees are appointed, to the institution, body or persons designated to hold or receive the same under or by the scheme or order, and shall execute all instruments and do all things necessary for giving effect to this section, and upon doing all the things required by this paragraph and, in an appropriate case, by section 22, shall no longer be liable in respect

of any express or implied trust upon which they held such property, except for wilful negligence or misappropriation thereof;

- (c) if by the order or any other order of the judge any property in the fund, part or residue is vested in any persons, then the order vesting that property shall have the same effect as if the order so vesting the property were a vesting order made by the Supreme Court or a judge thereof in relation to like property under the *Trustees and Executors Act 1897* and, where necessary, the provisions of that Act relating to such an order, with all necessary adaptations thereof, shall apply for this purpose;

Editor's note—

Now see *Acts Interpretation Act 1954*, section 14H and *Trusts Act 1973*.

- (d) if any property in the fund, part or residue is land, then a copy of the scheme and of any order made by the judge concerning the land shall be lodged by the trustee or trustees administering the scheme in the office of the authority charged with the registration of dealings relating to the said land.

22 Books etc. to be handed over to new trustees

Upon the approval of any scheme or the making of any order under this Act by a judge or the certification under this Act of any scheme by a certifying officer in relation to any fund or any part or residue thereof, whereby any new or additional trustee or trustees are appointed, then every person who before the approval or certification of the scheme or the making of the order was a trustee but who is no longer a trustee, and every person (other than the trustee or trustees administering the approved or certified scheme) having in the person's custody or under the person's control any books, vouchers, documents, records, agreements, securities, correspondence or any other thing (whether of the classes of things before enumerated or not) belonging to the fund or to which the trustee or trustees administering the approved or

certified scheme are entitled, shall forthwith hand over the same to the trustee or trustees last mentioned.

23 Enforcement of handing over

Without affecting any other remedy which may be pursued, upon any failure by any person to convey, transfer, or pay or hand over any property, books, vouchers, documents, records, agreements, securities, correspondence or any other thing, or to execute any instrument, or to do any thing as required by any provision of section 10(7), 21 or 22, a judge of the Supreme Court may on application in that behalf—

- (a) appoint some person to do and execute on behalf of the defaulter all acts and instruments so required to be done or executed, and thereupon all acts and instruments so done or executed shall be as valid, sufficient and binding as if they had been done or executed by the defaulter;
- (b) order the defaulter to convey, transfer, or pay or hand over the property, books, vouchers, documents, records, agreements, securities, correspondence or other thing, to execute the instrument, or to do the thing, and thereupon any further default of the person so ordered shall be punishable as a contempt of court.

24 Audit

- (1) An audit in relation to any fund (including an examination of such of the accounts and other books, vouchers, documents, records, agreements and securities relating to the fund as are necessary for the purpose of the audit) shall be made in accordance with this section—
 - (a) if directed by the certifying officer—
 - (i) upon the submission to a certifying officer under this Act of a scheme relating to the fund; or
 - (ii) when considering the preparation of a scheme under section 9 or 10; or

- (b) if directed by the judge upon any scheme relating to the fund being laid before or submitted under this Act to a judge of the Supreme Court.
- (2) Every direction under subsection (1)—
- (a) unless such notification is dispensed with by a judge of the Supreme Court, shall, wherever possible, be notified in writing delivered to, or posted by prepaid registered post or certified mail in an envelope addressed to any of the trustees at his, her or their last known place of residence or of business;
 - (b) may, whether any notification is given under paragraph (a) or not, be notified in the gazette;
 - (c) shall nominate as auditor—
 - (i) a person registered as an auditor under the Corporations Act; or
 - (ii) a member of CPA Australia who is entitled to use the letters ‘CPA’ or ‘FCPA’; or
 - (iii) a member of The Institute of Chartered Accountants in Australia who is entitled to use the letters ‘CA’ or ‘FCA’; or
 - (iv) a member of the Institute of Public Accountants who is entitled to use the letters ‘MIPA’ or ‘FIPA’; or
 - (v) a person who the chief executive considers has appropriate qualifications.
- (3) The auditor so nominated—
- (a) shall have authority to make the audit in relation to the fund, including authority to examine such of the accounts, other books, vouchers, documents, records, correspondence, agreements and securities relating to the fund as are necessary for the purpose of the audit, authority to obtain such information and explanations as the auditor may require in relation thereto, and authority to take such notes or copies of or extracts from any such book, voucher, document, record, correspondence,

agreement or security or of any entries therein as the auditor may deem necessary;

- (b) shall, upon completion of the audit, make a report of the result thereof, accompanied by a balance sheet certified under the hand of the auditor as being, in his or her opinion, properly drawn up so as to exhibit a true and correct view of the state of the fund according to the best of his or her information and the explanations given to the auditor and as shown by the books of the fund, to the certifying officer, or in the case where a judge has directed the audit, to be laid before the judge in compliance with the directions of the judge in that behalf.
- (4) Where an audit report is made under this section to a certifying officer, if any scheme in relation to the fund to which the audit report relates is laid before or submitted to a judge under this Act, then the report, or a copy thereof obtained from and certified as a true and correct copy by the certifying officer, shall be filed in the office of the registrar of the Supreme Court where the scheme is filed to be laid before the judge with the scheme.
- (5) For the purposes of an audit under this section, the trustee or trustees of the fund or of any property in the fund or any other person having in the person's custody or under the person's control any accounts, other books, vouchers, documents, records, correspondence, agreements or securities relating to the fund, shall as required by the auditor—
- (a) produce the same to the auditor;
- (b) answer any questions or supply any information with respect thereto or any entry therein.
- (6) Any person who—
- (a) fails to produce when and as required by and under subsection (5), any account, other book, voucher, document, record, correspondence, agreement or security referred to in that subsection; or
- (b) (knowing or being in a position to know the answer or information required), fails to answer any question or

supply any information when and as required by and under subsection (5) with respect to any such account, other book, voucher, document, record, correspondence, agreement or security, or with respect to any entry therein; or

- (c) when and as required by and under subsection (5) to answer any question or supply any information to an auditor furnishes an answer or supplies information which is in any respect false or misleading;

shall be punishable as for a contempt of court.

25 Protection of new trustees

- (1) If in relation to any fund any new or additional trustee or trustees are lawfully appointed to act with respect to the administration of any scheme approved or certified under this Act, the new or additional trustee or trustees, save where a judge of the Supreme Court has upon or prior to such appointment as trustee otherwise directed, shall be entitled to accept and forthwith to act upon, as exhibiting the true and correct position of the fund, the balance sheet (if any) referred to in section 24(3)(b).
- (2) Where in relation to any fund or any part or residue thereof any new or additional trustee or trustees are appointed under this Act to act with respect to the administration of any scheme approved under this Act, the new or additional trustee or trustees shall be entitled to be relieved from all personal liability with respect to all actions, proceedings, claims and demands arising or which have arisen out of any dealing with or otherwise in relation to the fund, part or residue prior to such appointment.

26 Saving of existing liabilities

Subject to this Act, a change under this Act of the name of any fund or any part or residue thereof, or of the purposes to which the same is to be applied, or of both the name and purposes aforesaid, shall not affect any liability or obligation in relation to such fund, part or residue existing immediately

prior to such change, or render defective any legal proceedings by or against the trustees, past or present, of such fund, part or residue, and any legal proceedings which might have been commenced or continued immediately prior to such change may be so commenced or continued after such change.

30 Judicial notice of gazette notifications

Judicial notice shall be taken of every notification published under and pursuant to this Act in the gazette.

31 Regulations

The Governor in Council may from time to time make regulations, not inconsistent with this Act, which are necessary or convenient for carrying out or giving effect to this Act.

32 Publication of orders in council etc.

- (1) Every order in council, regulation and rule made under this Act shall—
 - (a) be published in the gazette; and
 - (b) upon its publication in the gazette, be judicially noticed, and such publication shall be conclusive evidence of the matters contained therein; and
 - (c) take effect from the date of such publication unless, in the case of any such order in council, regulation or rule, a later date is specified in that or any other order in council, regulation, or, as the case may be, rule for its commencement when in such event it shall take effect from that later date; and
 - (d) be laid before the Legislative Assembly within 14 sitting days after such publication if the Legislative Assembly is in session, and if not, then within 14 sitting days after the commencement of the next session.
- (2) If the Legislative Assembly passes a resolution of which notice has been given at any time within 14 sitting days after

any such order in council, regulation or rule has been laid before it, disallowing such order in council, regulation or rule or part thereof, that order in council, regulation or rule or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further order in council, regulation or rule.