

FIRST PRINT

## CHARITABLE TRUSTS BILL 1993

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to clarify, and to some degree extend, the jurisdiction of the Supreme Court with respect to the protection of charitable property; and
- (b) to extend the circumstances in which the original purposes of a charitable trust fail and those purposes can be altered to allow the trust property to be applied cy pres (i.e. for similar purposes); and
- (c) to enable the Attorney General (as well as the Supreme Court) to establish schemes for the administration of charitable trusts, including cy pres schemes; and
- (d) to consolidate existing statutory provisions relating to charitable trusts; and
- (e) to make other minor amendments to the law relating to charitable trusts.

---

### PART 1—PRELIMINARY

#### Short title and commencement

Clauses 1 and 2 specify the short title of the proposed Act and provide for its commencement on a proclaimed day or days.

#### Definitions

Clause 3 defines certain expressions for the purposes of the proposed Act. In particular:

“Charitable trust” is defined to mean a trust for purposes recognised by law as charitable. The definition provides for the exclusion of charitable trusts which are not subject to the control of the Court, e.g. a charitable trust established by an Act and subject to the control of a Minister (see *Construction Industry Training Board v. Attorney General* [1973] Ch. 173).

“Court” is defined to mean the Supreme Court of New South Wales.

*Charitable Trusts 1993*

---

**Application of proposed Act**

Clause 4 ensures that the proposed Act applies in respect of a charitable trust even though it was established outside New South Wales, or the property of the trust is not situated in New South Wales or the trustees of the trust are not domiciled or resident in New South Wales. The clause also ensures that the proposed Act applies to trusts created before as well as after the commencement of the proposed Act.

The proposed Act will not exclude the operation of other Acts relating to charitable trusts (e.g. Acts which specifically authorise the variation of trusts on which Church property is held).

**PART 2—PROTECTION OF CHARITABLE PROPERTY****Taking of certain proceedings to be authorised by Attorney General**

Section 17 of the Imperial Acts Application Act 1969 is being repealed by clause 27 and clause 6 re-enacts (with modifications) the provisions of that section that are not obsolete. The section is itself a re-enactment of Sir Samuel Romilly's Act (Imp.) which provided, when it was introduced in 1812, a simplified summary procedure by way of petition for proceedings involving the administration of a charitable trust and required such proceedings to be authorised by the Attorney General. As a result of the introduction, by the Supreme Court Act 1970, of uniform and simplified procedures for all proceedings in the Supreme Court, section 17 of the Imperial Acts Application Act 1969 has, except with respect to the authorisation of the Attorney General, been superseded by the Supreme Court Rules 1970 (see Division 11 of Part 77).

The remaining requirement of Sir Samuel Romilly's Act which is being re-enacted in this clause is the requirement that proceedings involving the administration of a charitable trust must be authorised by the Attorney General (or by leave of the Court if the authority of the Attorney General is refused). This requirement is being retained to protect charitable trusts from costly legal proceedings which may dissipate their funds. Clause 6 is similar to section 28 of the U.K. Charities Act 1960, but does not restrict the persons who may bring charitable trust proceedings to those "interested in" the charitable trust. This restriction is criticised in Halsbury's Laws of England as unclear (see Vol. 5 4th ed. at para. 923). Clause 6 (3) provides that, if the Attorney General authorises trust proceedings, the plaintiff will no longer be required to establish that the proceedings affect the plaintiff's legal rights in order to have standing to bring the proceedings. By clause 6 (4), the power of the Attorney General to bring charitable trust proceedings with or without a relator is preserved.

Clause 5 defines the charitable proceedings concerned, and makes it clear that they do not include proceedings on appeal or proceedings relating to the construction of a trust instrument (e.g. whether a will creates a valid charitable trust).

**Extension of powers of Court to protect charitable property**

Clauses 7 and 8 are intended to clarify and make specific the powers of the Court to deal with misconduct or mismanagement in the administration of a charitable trust. Generally those powers include:

- the removal of trustees and others involved in the affairs of a charitable trust;
- restrictions on dealings in trust property; and
- the appointment of a receiver.

### *Charitable Trusts 1993*

---

The powers specifically conferred on the Court are similar to those conferred on the Charity Commissioners by section 20 of the U.K. Charities Act 1960.

#### PART 3—APPLICATION OF CHARITABLE PROPERTY CY PRES

##### Extension of the occasions for applying trust property cy pres

Clause 9 extends the circumstances in which the original purposes of a charitable trust fail and the trust property can be applied cy pres i.e. for a similar purpose. The circumstances are to extend to trusts whose original purposes have ceased to provide a suitable and effective method of using the trust property having regard to the spirit of the trust. A similar extension has been made in other States.

##### Requirement for general charitable intention

Clause 10 preserves the requirement of the existing law that charitable property cannot be applied cy pres if it was given only for the purpose of the trust and without any general charitable intention. However, the clause creates a presumption in favour of a general charitable intention.

The presumption was recommended by the Legal and Constitutional Committee of the Victorian Parliament in its report on charitable trusts of May 1989.

##### Duty of trustee to secure application of trust property cy pres

Clause 11 is being enacted to declare the duties of trustees of a charitable trust if the original purposes of a charitable trust fail. The duty to apply trust property cy pres was first stated in the *National Anti-Vivisection Case* (see *National Anti-Vivisection Society v. Inland Revenue Commissioners* [1948] A.C. at p. 74.) The clause is in the same terms as section 13 (5) of the U.K. Charities Act 1960 and section 2 (4) of the Charities Act 1978 of Victoria.

#### PART 4—SCHEMES BY ATTORNEY GENERAL FOR ADMINISTRATION OF CHARITABLE TRUSTS

##### Attorney General may establish schemes

Clause 12 authorises the Attorney General to establish a scheme for the administration of a charitable trust in certain limited cases so as to avoid the necessity for the trustees of the trust to approach the courts. Such a scheme may, among other things:

- (a) authorise the application of charitable property cy pres on a failure of the purposes for which it was given; or
- (b) authorise the application of charitable property for specific charitable purposes where property is given for a general charitable purpose; or
- (c) extend or vary the powers of the trustees of a charitable trust.

Clause 13 authorises the Attorney General to establish a scheme on application by a trustee, on the Attorney General's own initiative (in special cases) or on referral by the Supreme Court.

### *Charitable Trusts 1993*

---

#### **Restrictions on power of Attorney General to establish schemes**

Clause 14 imposes restrictions on the exercise by the Attorney General of the power to establish schemes. A scheme cannot be established if the value of the trust property affected by the proposed scheme is more than \$500,000 or such other amount as is prescribed by the regulations. Nor can a scheme be established if the Attorney General considers that there are good reasons why the matter would be better dealt with by the Court. These restrictions do not apply to a referral by the Court.

#### **Publicity for schemes established by Attorney General**

Clause 15 requires an intended scheme (except in certain circumstances) to be publicised and public comment to be invited, and requires the Attorney General to consider representations and suggestions made by any person in relation to the matter.

#### **Publication and commencement of schemes**

Clause 16 deals with the due publication and commencement of schemes that are settled by the Attorney General.

#### **Revocation or variation of schemes**

Clause 17 enables a scheme to be revoked or varied in the same manner as that in which it may be made.

#### **Appeal from order of Attorney General**

Clause 18 provides an appeal to the Court against an order of the Attorney General that would establish, revoke or vary a scheme.

#### **Register of orders of Attorney General**

Clause 19 requires the Attorney General to maintain a public register of orders made by the Attorney General.

#### **Immunity of Attorney General**

Clause 20 affords the Attorney General, in respect of the establishment, variation or revocation of a scheme under this Part, the same immunities as a Judge of the Court would have if the scheme had been dealt with by the Court.

#### **Fees payable to Attorney General**

Clause 21 authorises the Attorney General to charge fees for the costs and expenses incurred in establishing or varying a scheme.

#### **Determination of value of trust property**

Clause 22 authorises the Attorney General to determine the value of trust property for the purposes of provisions of the Part that depend on the value of the trust property concerned.

*Charitable Trusts 1993*

---

**PART 5—MISCELLANEOUS****Inclusion of non-charitable purpose not to invalidate trust**

Clause 23 re-enacts without modification the provisions of section 37D of the Conveyancing Act 1919, which was inserted into that Act by section 3 of the Conveyancing, Trustee and Probate (Amendment) Act 1938, in order that trusts which included charitable and non-charitable purposes were not invalidated but construed as trusts for the charitable purposes only. The clause preserves the requirement that the provisions of section 37D do not apply to trusts declared, or the wills of testators dying, before the commencement of the 1938 amending Act. The repeal of section 37D of the Conveyancing Act 1919 is effected by clause 27.

**Act binds the Crown**

Clause 24 declares that the proposed Act binds the Crown.

**Regulations**

Clause 25 confers a general regulation-making power on the Governor-in-Council.

**Saving of pending court proceedings**

Clause 26 saves pending court proceedings.

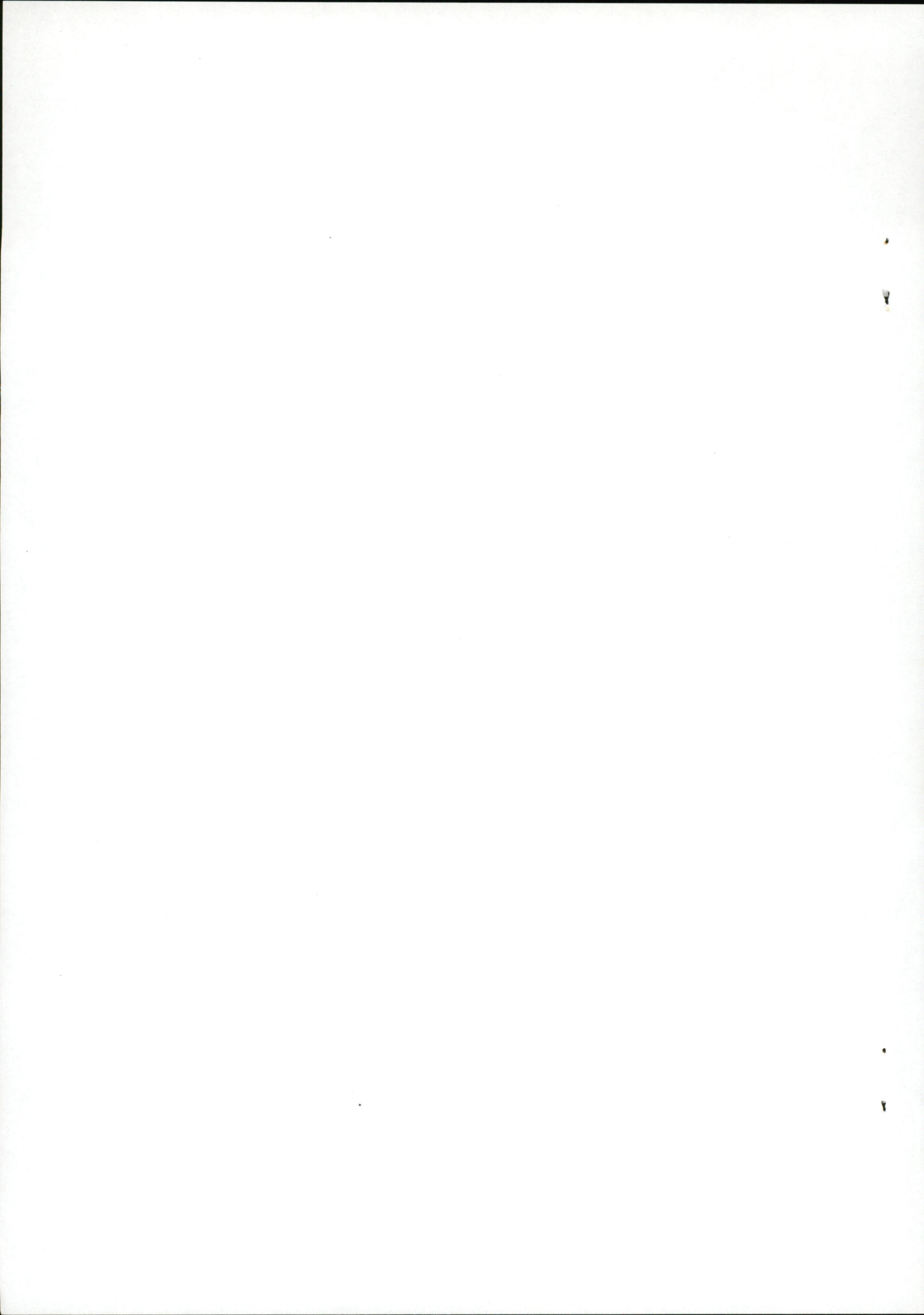
**Consequential repeals**

Clause 27 repeals provisions of other Acts that are to be replaced by the proposed Act.

**Review**

Clause 28 requires the proposed Act to be reviewed within 5 years of its assent.

---



FIRST PRINT

## CHARITABLE TRUSTS BILL 1993

NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Application of Act

#### PART 2—PROTECTION OF CHARITABLE PROPERTY

5. Definition of "charitable trust proceedings"
6. Bringing of certain charitable trust proceedings to be authorised by Attorney General or by leave
7. Extension of powers of Court to protect charitable property
8. Provisions relating to removal of trustees etc.

#### PART 3—APPLICATION OF CHARITABLE PROPERTY CY PRES

9. Extension of the occasions for applying trust property cy pres
10. Requirement for general charitable intention of donor
11. Duty of trustee to secure application of trust property cy pres

#### PART 4—SCHEMES BY ATTORNEY GENERAL FOR ADMINISTRATION OF CHARITABLE TRUSTS

12. Attorney General may establish schemes
13. Application etc. for establishment of scheme by Attorney General
14. Restrictions on power of Attorney General to establish schemes
15. Publicity for schemes proposed to be established by Attorney General
16. Publication and commencement of schemes
17. Revocation or variation of schemes
18. Appeal from orders of Attorney General relating to schemes

*Charitable Trusts 1993*

---

19. Register of orders of Attorney General relating to schemes
20. Immunity of Attorney General
21. Fees payable to Attorney General
22. Determination of value of trust property for purposes of this Part

**PART 5—MISCELLANEOUS**

23. Inclusion of non-charitable purpose not to invalidate trust
  24. Act binds the Crown
  25. Regulations
  26. Pending charitable trust proceedings not affected
  27. Consequential repeals
  28. Review of Act
-



**CHARITABLE TRUSTS BILL 1993**

NEW SOUTH WALES



No. , 1993

---

---

**A BILL FOR**

An Act to make further provision for the protection of charitable trusts; to authorise the Attorney General to establish schemes for the administration of charitable trusts; and for other purposes.

---

---

*Charitable Trusts 1993*

---

The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Charitable Trusts Act 1993.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. In this Act:

- 10 “charitable trust” means any trust established for charitable purposes and subject to the control of the Court in the exercise of the Court’s general jurisdiction with respect to charitable trusts;  
“Court” means the Supreme Court of New South Wales;  
15 “trust property” means any property subject to the charitable trust concerned.

**Application of Act**

4. (1) This Act applies in respect of a charitable trust even though:  
(a) it was established outside New South Wales; or  
(b) the trust property is not situated in New South Wales; or  
20 (c) the trustees are not domiciled or resident in New South Wales.  
(2) This Act applies to a trust created before or after the commencement of this section, except as otherwise provided by this Act.  
(3) This Act does not apply to the exclusion of the provisions of any other Act relating to charitable trusts.

**25 PART 2—PROTECTION OF CHARITABLE PROPERTY****Definition of “charitable trust proceedings”**

- 30 5. (1) In this Part, “charitable trust proceedings” means proceedings in the Court brought, whether by any trustee of a charitable trust or by any other person, under the Court’s statutory or general jurisdiction with respect to any breach or supposed breach of a charitable trust, or with respect to the administration of a charitable trust.

*Charitable Trusts 1993*

(2) However, in this Part “charitable trust proceedings” does not include:

- (a) proceedings for the bringing of any appeal; or
- (b) proceedings relating merely to the construction of a trust instrument.

5

**Bringing of certain charitable trust proceedings to be authorised by Attorney General or by leave**

6. (1) Charitable trust proceedings are not to be commenced in the Court unless:

- (a) the Attorney General has authorised the bringing of the proceedings; or
- (b) leave to bring the proceedings is obtained from the Court.

10

(2) The Court is not to give such leave unless satisfied that the Attorney General has been given an opportunity to consider whether to authorise the proceedings or that the referral of the matter to the Attorney General is not appropriate because of the urgency of the matter or other good cause.

15

(3) A person who does not otherwise have standing may bring charitable trust proceedings if authorised by the Attorney General to bring those proceedings.

20

(4) Nothing in this section applies to the bringing by the Attorney General, with or without a relator, of charitable trust proceedings or any other proceedings relating to a charitable trust.

**Extension of powers of Court to protect charitable property**

7. (1) If the Court, in charitable trust proceedings, is satisfied that:

25

- (a) there has been any misconduct or mismanagement in the administration of a charitable trust; and
- (b) it is necessary or desirable to act for the purpose of protecting existing or future trust property or securing a proper application, for the purpose of the charitable trust, of existing or future trust property,

30

the Court may, without limiting any other powers of the Court, make one or more of the orders specified in subsection (2).

(2) The orders which may be made by the Court are as follows:

- (a) an order removing any or all trustees of the charitable trust;
- (b) an order appointing a person as a trustee of the charitable trust;

35

*Charitable Trusts 1993*

---

- (c) an order precluding the employment or engagement of a person in the affairs of the charitable trust;
- 5 (d) an order directing any bank or person who holds property of the charitable trust not to part with the property without the approval of the Court or the Attorney General (or a person authorised by the Attorney General) or of some other person;
- 10 (e) an order restricting the transactions which may be entered into or the nature or amount of the payments which may be made, in the administration of the charitable trust, without the approval of the Court or the Attorney General (or a person authorised by the Attorney General) or of some other person;
- (f) an order appointing a receiver of the property of the charitable trust;
- 15 (g) an order which is necessary or convenient to be made for giving effect to an order referred to in this subsection.
- (3) A person appointed by order of the Court under this section as a receiver of the property of a charitable trust:
- 20 (a) may require the trustees to deliver to the receiver any property of which the person has been appointed receiver or to give to the receiver all such information concerning that property as may reasonably be required; and
- (b) may acquire and take possession of any property of which the person has been appointed receiver; and
- 25 (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the trustees might lawfully have dealt with the property; and
- (d) has such other powers and duties in respect of the property as the Court specifies in the order.
- 30 (4) Nothing in the terms of any charitable trust precludes the Court from making any order it is empowered by this section to make or affects the operation of any such order.
- 35 (5) In this section and section 8, “**misconduct or mismanagement**” includes the remuneration of persons acting in the affairs of the charitable trust concerned, or for other administrative purposes, by payments which are excessive in relation to the duties of the persons so acting.

**Provisions relating to removal of trustees etc.**

8. Without limiting the powers of the Court, the Court may, under section 7, remove a trustee of a charitable trust:

*Charitable Trusts 1993*

- 
- (a) if the trustee has been responsible for or participated in misconduct or mismanagement in the administration of the charitable trust or has by the trustee's conduct contributed to it or facilitated it; or
- (b) if the trustee has been convicted, whether in New South Wales or elsewhere, of any offence involving fraud or dishonesty; or 5
- (c) if the trustee has become mentally incapacitated; or
- (d) if the trustee has become bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or 10
- (e) if the trustee is a corporation:
- (i) which is in the course of being wound up; or
- (ii) which is under official management; or
- (iii) in respect of which a receiver or manager has been appointed, whether by the Court or pursuant to the powers contained in any instrument or otherwise; or 15
- (iv) which has entered into a compromise or scheme of arrangement with its creditors; or
- (v) in respect of which a writ of execution or other process has been issued on a judgment, decree or order of any court in favour of a creditor of the corporation and has been returned unsatisfied in whole or in part. 20

**PART 3—APPLICATION OF CHARITABLE PROPERTY  
CY PRES**

**Extension of the occasions for applying trust property cy pres 25**

9. (1) The circumstances in which the original purposes of a charitable trust can be altered to allow the trust property or any part of it to be applied cy pres include circumstances in which the original purposes, wholly or in part, have since they were laid down ceased to provide a suitable and effective method of using the trust property, having regard to the spirit of the trust. 30

(2) References in this section to the original purposes of a charitable trust are to be construed, if the application of the trust property or any part of it has been altered or regulated by a scheme or otherwise, as references to the purposes for which the trust property are for the time being applicable. 35

**Requirement for general charitable intention of donor**

10. (1) This Part does not affect the requirement that trust property can not be applied cy pres unless it is given with a general charitable intention.

- 5 (2) However, a general charitable intention is to be presumed unless there is evidence to the contrary in the instrument establishing the charitable trust.

**Duty of trustee to secure application of trust property cy pres**

- 10 11. A charitable trust places a trustee under a duty, if the case permits and requires the trust property or any part of it to be applied cy pres, to secure its effective use for charitable purposes by taking steps to enable it to be so applied.

**PART 4—SCHEMES BY ATTORNEY GENERAL FOR  
ADMINISTRATION OF CHARITABLE TRUSTS**

15 **Attorney General may establish schemes**

12. (1) The Attorney General may by order establish a scheme for the administration of any charitable trust. In particular, the Attorney General may by such an order:

- 20 (a) establish a scheme for the alteration of the original purposes of a charitable trust so as to enable the trust property or any part of it to be applied cy pres if it appears to the Attorney General that the trust property or any part of it may be so applied; or
- 25 (b) establish a scheme to extend or vary the powers of trustees of a charitable trust or prescribe or vary the manner or mode of administration of any charitable trust, either generally or in a particular case, if it appears to the Attorney General that it is expedient to do so in the interests of the administration of the charitable trust; or
- 30 (c) in the case of 2 or more charitable trusts, establish a scheme to authorise the trustees to use common premises or employ common staff in the administration of the trusts, to pool the trust property for the purpose of investment, or otherwise to combine for any purpose of administration of the trusts.

- 35 (2) Without limiting the generality of any provision of this Part, a scheme under this Part may vest in any trustees of a charitable trust who desire to sell, mortgage or lease the trust property or any part of it, but

*Charitable Trusts 1993*

---

who cannot do so for lack of power vested in them by the instrument (if any) creating the trust or by law, the necessary power for such a sale, mortgage or lease.

(3) If there are no trustees of a charitable trust, a scheme under this Part may appoint trustees for the purposes of the scheme. 5

(4) A scheme for the administration of a charitable trust established by the Attorney General under this Part has the same effect as it would have if it had been established by the Court.

**Application etc. for establishment of scheme by Attorney General**

13. (1) The Attorney General may establish a scheme under this Part: 10

- (a) on the application of all or any of the trustees; or
- (b) in a special case—on the Attorney General's own initiative; or
- (c) in accordance with a referral from the Court under subsection (2).

(2) If the Court directs that a scheme for the administration of a charitable trust be established, the Court may, by order, refer the matter to the Attorney General for the Attorney General to establish the scheme in accordance with the directions (if any) of the Court. 15

**Restrictions on power of Attorney General to establish schemes**

14. (1) The Attorney General is not to establish a scheme under this Part if: 20

- (a) the value of the trust property affected by the scheme exceeds \$500,000 or, if another amount is prescribed by the regulations, that other amount; or
- (b) the Attorney General is satisfied that the subject matter is, because of its contentious character or any special question of law or fact or for other reasons, more fit to be dealt with by the Court. 25

(2) This section does not apply to the establishment of a scheme in accordance with a referral from the Court.

**Publicity for schemes proposed to be established by Attorney General** 30

15. (1) The Attorney General is not to establish a scheme under this Part unless:

- (a) the Attorney General (or a person authorised by the Attorney General) has, not less than 1 month previously, published in the Gazette or in a newspaper circulating throughout New South Wales a notice about the proposed scheme; and 35

*Charitable Trusts 1993*

---

- (b) the Attorney General has given due consideration to any representations or suggestions made in respect of the proposed scheme by any person.
- (2) A notice about a proposed scheme must:
- 5 (a) specify that the Attorney General proposes to establish a scheme under this Part; and
- (b) give details of the proposed scheme or specify a place at which a copy of the proposed scheme may be inspected; and
- 10 (c) specify a period within which any person may make representations or suggestions to the Attorney General in respect of the proposed scheme.
- (3) This section does not apply to the establishment of a scheme if:
- (a) the scheme does not alter the original purposes of the charitable trust and the Attorney General is satisfied that the scheme should
- 15 be established as a matter of urgency; or
- (b) the value of the trust property affected by the scheme does not exceed \$2,000 or, if another amount is prescribed by the regulations, that other amount; or
- 20 (c) the scheme is established in accordance with a referral from the Court.

**Publication and commencement of schemes**

16. (1) If the Attorney General makes an order under this Part establishing a scheme, the Attorney General must publish in the Gazette or in a newspaper circulating throughout New South Wales a copy of the
- 25 order or brief details of the order and the address of the place at which a copy of the order may be inspected.
- (2) Any such order does not take effect:
- (a) until 21 days after its publication in accordance with this section or such later time as is specified in the order; or
- 30 (b) if an appeal against the order is duly made to the Court under this Part within that time, unless the order is confirmed or the appeal is withdrawn or lapses.
- (3) An order establishing a scheme referred to in section 15 (3) may,
- 35 despite anything in this section, specify that it takes effect on or at any time after its publication.



**Revocation or variation of schemes**

17. (1) The Attorney General may revoke a scheme established under this Part by a further order published in the same manner as the order establishing the scheme.

(2) The Attorney General may vary a scheme established under this Part by a further order published in the same manner as the order establishing the scheme. The provisions of this Part relating to the establishment of a scheme apply to any such variation of the scheme. 5

**Appeal from orders of Attorney General relating to schemes**

18. (1) If the Attorney General makes an order under this Part: 10

(a) any trustee of the charitable trust concerned; or

(b) with the leave of the Court, any other person,

may appeal to the Court against the order within 21 days after the order is published under this Part or, with the leave of the Court, at any time after the order is so published. 15

(2) An appeal is to be made in accordance with the rules of the Court.

(3) The Court may, in determining the appeal, confirm, vary or quash the order.

(4) If the Court quashes the order, it may establish another scheme for the administration of the charitable trust or direct the Attorney General to establish another such scheme in accordance with the directions (if any) of the Court. 20

(5) A scheme purporting to be established by the Attorney General under this Part may not be challenged because of any alleged contravention of this Part, except in an appeal to the Court under this section. 25

**Register of orders of Attorney General relating to schemes**

19. (1) The Attorney General is to maintain a register of all orders made by the Attorney General under this Part.

(2) The register is to be open to inspection by any person during ordinary office hours. 30

(3) The regulations may make provision for or with respect to the maintenance and inspection of the register.

**Immunity of Attorney General**

20. The Attorney General has, in relation to any matter or thing done or omitted by the Attorney General in connection with any scheme under this Part, the same immunities from liability as a Judge of the Court  
5 would have if the matter or thing were done or omitted by the Court.

**Fees payable to Attorney General**

21. (1) The Attorney General may, by the order establishing or varying a scheme under this Part, charge fees for the costs and expenses (including legal costs and disbursements) incurred by the Attorney  
10 General in connection with the establishment or variation of the scheme.

(2) Any such fees may be fixed as a percentage of the value of the trust property affected by the scheme (with or without any minimum fee).

(3) Any fees payable under this section are (unless paid by the applicant for the establishment or variation of the scheme) payable from  
15 the trust property concerned.

(4) An appeal may be made to the Court against an order under this Part in connection with the fees required to be paid under the order.

**Determination of value of trust property for purposes of this Part**

22. For the purposes of this Part, the determination of the value of  
20 trust property is to be made by the Attorney General. The value is to be determined as at the date of the application for the scheme concerned or any other date the Attorney General considers convenient.

**PART 5—MISCELLANEOUS**

25 **Inclusion of non-charitable purpose not to invalidate trust (cf. former s. 37D of Conveyancing Act 1919)**

23. (1) A trust is not invalid merely because some non-charitable and invalid purpose as well as some charitable purpose is or could be taken to be included in any of the purposes to or for which an application of the trust property or of any part of it is directed or allowed by the trust.

30 (2) Any such trust is to be construed and given effect to in the same manner in all respects as if no application of the trust property or of any part of it to or for any such non-charitable and invalid purpose had been or could be taken to have been so directed or allowed.

(3) This section does not apply to any trust declared before, or to the will of any testator dying before, 1 January 1939, being the date of commencement of the Conveyancing, Trustee and Probate (Amendment) Act 1938.

**Act binds the Crown** 5

24. This Act binds the Crown.

**Regulations**

25. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10

**Pending charitable trust proceedings not affected**

26. Nothing in any provision of this Act affects any proceedings relating to a trust that were commenced in the Court before the commencement of the provision concerned. 15

**Consequential repeals**

27. The following provisions are repealed:

Division 6 of Part 2 of the Conveyancing Act 1919 (**Trusts for charitable purposes**)

Division 3 of Part 3 of the Imperial Acts Application Act 1969 (**Charities**). 20

**Review of Act**

28. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 25

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

---



# CHARITABLE TRUSTS ACT 1993 No. 10

NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Application of Act

### PART 2—PROTECTION OF CHARITABLE PROPERTY

5. Definition of “charitable trust proceedings”
6. Bringing of certain charitable trust proceedings to be authorised by Attorney General or by leave
7. Extension of powers of Court to protect charitable property
8. Provisions relating to removal of trustees etc.

### PART 3—APPLICATION OF CHARITABLE PROPERTY CY PRES

9. Extension of the occasions for applying trust property cy pres
10. Requirement for general charitable intention of donor
11. Duty of trustee to secure application of trust property cy pres

### PART 4—SCHEMES BY ATTORNEY GENERAL FOR ADMINISTRATION OF CHARITABLE TRUSTS

12. Attorney General may establish schemes
13. Application etc. for establishment of scheme by Attorney General
14. Restrictions on power of Attorney General to establish schemes
15. Publicity for schemes proposed to be established by Attorney General
16. Publication and commencement of schemes
17. Revocation or variation of schemes
18. Appeal from orders of Attorney General relating to schemes

*Charitable Trusts Act 1993 No. 10*

---

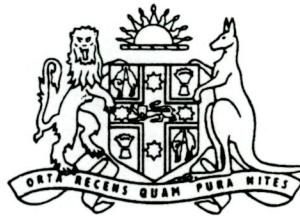
19. Register of orders of Attorney General relating to schemes
20. Immunity of Attorney General
21. Fees payable to Attorney General
22. Determination of value of trust property for purposes of this Part

PART 5—MISCELLANEOUS

23. Inclusion of non-charitable purpose not to invalidate trust
  24. Act binds the Crown
  25. Regulations
  26. Pending charitable trust proceedings not affected
  27. Consequential repeals
  28. Review of Act
-

**CHARITABLE TRUSTS ACT 1993 No. 10**

**NEW SOUTH WALES**



**Act No. 10, 1993**

An Act to make further provision for the protection of charitable trusts; to authorise the Attorney General to establish schemes for the administration of charitable trusts; and for other purposes. [Assented to 4 May 1993]

**The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Charitable Trusts Act 1993.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. In this Act:

“**charitable trust**” means any trust established for charitable purposes and subject to the control of the Court in the exercise of the Court’s general jurisdiction with respect to charitable trusts;

“**Court**” means the Supreme Court of New South Wales;

“**trust property**” means any property subject to the charitable trust concerned.

**Application of Act**

4. (1) This Act applies in respect of a charitable trust even though:
  - (a) it was established outside New South Wales; or
  - (b) the trust property is not situated in New South Wales; or
  - (c) the trustees are not domiciled or resident in New South Wales.(2) This Act applies to a trust created before or after the commencement of this section, except as otherwise provided by this Act.  
(3) This Act does not apply to the exclusion of the provisions of any other Act relating to charitable trusts.

**PART 2—PROTECTION OF CHARITABLE PROPERTY****Definition of “charitable trust proceedings”**

5. (1) In this Part, “**charitable trust proceedings**” means proceedings in the Court brought, whether by any trustee of a charitable trust or by any other person, under the Court’s statutory or general jurisdiction with respect to any breach or supposed breach of a charitable trust, or with respect to the administration of a charitable trust.



*Charitable Trusts Act 1993 No. 10*

---

(2) However, in this Part “charitable trust proceedings” does not include:

- (a) proceedings for the bringing of any appeal; or
- (b) proceedings relating merely to the construction of a trust instrument.

**Bringing of certain charitable trust proceedings to be authorised by Attorney General or by leave**

6. (1) Charitable trust proceedings are not to be commenced in the Court unless:

- (a) the Attorney General has authorised the bringing of the proceedings; or
- (b) leave to bring the proceedings is obtained from the Court.

(2) The Court is not to give such leave unless satisfied that the Attorney General has been given an opportunity to consider whether to authorise the proceedings or that the referral of the matter to the Attorney General is not appropriate because of the urgency of the matter or other good cause.

(3) A person who does not otherwise have standing may bring charitable trust proceedings if authorised by the Attorney General to bring those proceedings.

(4) Nothing in this section applies to the bringing by the Attorney General, with or without a relator, of charitable trust proceedings or any other proceedings relating to a charitable trust.

**Extension of powers of Court to protect charitable property**

7. (1) If the Court, in charitable trust proceedings, is satisfied that:

- (a) there has been any misconduct or mismanagement in the administration of a charitable trust; and
- (b) it is necessary or desirable to act for the purpose of protecting existing or future trust property or securing a proper application, for the purpose of the charitable trust, of existing or future trust property,

the Court may, without limiting any other powers of the Court, make one or more of the orders specified in subsection (2).

(2) The orders which may be made by the Court are as follows:

- (a) an order removing any or all trustees of the charitable trust;
- (b) an order appointing a person as a trustee of the charitable trust;

*Charitable Trusts Act 1993 No. 10*

---

- (c) an order precluding the employment or engagement of a person in the affairs of the charitable trust;
- (d) an order directing any bank or person who holds property of the charitable trust not to part with the property without the approval of the Court or the Attorney General (or a person authorised by the Attorney General) or of some other person;
- (e) an order restricting the transactions which may be entered into or the nature or amount of the payments which may be made, in the administration of the charitable trust, without the approval of the Court or the Attorney General (or a person authorised by the Attorney General) or of some other person;
- (f) an order appointing a receiver of the property of the charitable trust;
- (g) an order which is necessary or convenient to be made for giving effect to an order referred to in this subsection.

(3) A person appointed by order of the Court under this section as a receiver of the property of a charitable trust:

- (a) may require the trustees to deliver to the receiver any property of which the person has been appointed receiver or to give to the receiver all such information concerning that property as may reasonably be required; and
- (b) may acquire and take possession of any property of which the person has been appointed receiver; and
- (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the trustees might lawfully have dealt with the property; and
- (d) has such other powers and duties in respect of the property as the Court specifies in the order.

(4) Nothing in the terms of any charitable trust precludes the Court from making any order it is empowered by this section to make or affects the operation of any such order.

(5) In this section and section 8, “**misconduct or mismanagement**” includes the remuneration of persons acting in the affairs of the charitable trust concerned, or for other administrative purposes, by payments which are excessive in relation to the duties of the persons so acting.

**Provisions relating to removal of trustees etc.**

8. Without limiting the powers of the Court, the Court may, under section 7, remove a trustee of a charitable trust:

*Charitable Trusts Act 1993 No. 10*

---

- (a) if the trustee has been responsible for or participated in misconduct or mismanagement in the administration of the charitable trust or has by the trustee's conduct contributed to it or facilitated it; or
- (b) if the trustee has been convicted, whether in New South Wales or elsewhere, of any offence involving fraud or dishonesty; or
- (c) if the trustee has become mentally incapacitated; or
- (d) if the trustee has become bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has made an assignment of his or her remuneration for their benefit; or
- (e) if the trustee is a corporation:
  - (i) which is in the course of being wound up; or
  - (ii) which is under official management; or
  - (iii) in respect of which a receiver or manager has been appointed, whether by the Court or pursuant to the powers contained in any instrument or otherwise; or
  - (iv) which has entered into a compromise or scheme of arrangement with its creditors; or
  - (v) in respect of which a writ of execution or other process has been issued on a judgment, decree or order of any court in favour of a creditor of the corporation and has been returned unsatisfied in whole or in part.

**PART 3—APPLICATION OF CHARITABLE PROPERTY  
CY PRES**

**Extension of the occasions for applying trust property cy pres**

9. (1) The circumstances in which the original purposes of a charitable trust can be altered to allow the trust property or any part of it to be applied cy pres include circumstances in which the original purposes, wholly or in part, have since they were laid down ceased to provide a suitable and effective method of using the trust property, having regard to the spirit of the trust.

(2) References in this section to the original purposes of a charitable trust are to be construed, if the application of the trust property or any part of it has been altered or regulated by a scheme or otherwise, as references to the purposes for which the trust property are for the time being applicable.

**Requirement for general charitable intention of donor**

10. (1) This Part does not affect the requirement that trust property can not be applied *cy pres* unless it is given with a general charitable intention.

(2) However, a general charitable intention is to be presumed unless there is evidence to the contrary in the instrument establishing the charitable trust.

**Duty of trustee to secure application of trust property *cy pres***

11. A charitable trust places a trustee under a duty, if the case permits and requires the trust property or any part of it to be applied *cy pres*, to secure its effective use for charitable purposes by taking steps to enable it to be so applied.

**PART 4—SCHEMES BY ATTORNEY GENERAL FOR  
ADMINISTRATION OF CHARITABLE TRUSTS****Attorney General may establish schemes**

12. (1) The Attorney General may by order establish a scheme for the administration of any charitable trust. In particular, the Attorney General may by such an order:

- (a) establish a scheme for the alteration of the original purposes of a charitable trust so as to enable the trust property or any part of it to be applied *cy pres* if it appears to the Attorney General that the trust property or any part of it may be so applied; or
- (b) establish a scheme to extend or vary the powers of trustees of a charitable trust or prescribe or vary the manner or mode of administration of any charitable trust, either generally or in a particular case, if it appears to the Attorney General that it is expedient to do so in the interests of the administration of the charitable trust; or
- (c) in the case of 2 or more charitable trusts, establish a scheme to authorise the trustees to use common premises or employ common staff in the administration of the trusts, to pool the trust property for the purpose of investment, or otherwise to combine for any purpose of administration of the trusts.

*Charitable Trusts Act 1993 No. 10*

---

(2) Without limiting the generality of any provision of this Part, a scheme under this Part may vest in any trustees of a charitable trust who desire to sell, mortgage or lease the trust property or any part of it, but who cannot do so for lack of power vested in them by the instrument (if any) creating the trust or by law, the necessary power for such a sale, mortgage or lease.

(3) If there are no trustees of a charitable trust, a scheme under this Part may appoint trustees for the purposes of the scheme.

(4) A scheme for the administration of a charitable trust established by the Attorney General under this Part has the same effect as it would have if it had been established by the Court.

**Application etc. for establishment of scheme by Attorney General**

13. (1) The Attorney General may establish a scheme under this Part:

- (a) on the application of all or any of the trustees; or
- (b) in a special case—on the Attorney General's own initiative; or
- (c) in accordance with a referral from the Court under subsection (2).

(2) If the Court directs that a scheme for the administration of a charitable trust be established, the Court may, by order, refer the matter to the Attorney General for the Attorney General to establish the scheme in accordance with the directions (if any) of the Court.

**Restrictions on power of Attorney General to establish schemes**

14. (1) The Attorney General is not to establish a scheme under this Part if:

- (a) the value of the trust property affected by the scheme exceeds \$500,000 or, if another amount is prescribed by the regulations, that other amount; or
- (b) the Attorney General is satisfied that the subject matter is, because of its contentious character or any special question of law or fact or for other reasons, more fit to be dealt with by the Court.

(2) This section does not apply to the establishment of a scheme in accordance with a referral from the Court.

**Publicity for schemes proposed to be established by Attorney General**

15. (1) The Attorney General is not to establish a scheme under this Part unless:

- (a) the Attorney General (or a person authorised by the Attorney General) has, not less than 1 month previously, published in the Gazette or in a newspaper circulating throughout New South Wales a notice about the proposed scheme; and
- (b) the Attorney General has given due consideration to any representations or suggestions made in respect of the proposed scheme by any person.

(2) A notice about a proposed scheme must:

- (a) specify that the Attorney General proposes to establish a scheme under this Part; and
- (b) give details of the proposed scheme or specify a place at which a copy of the proposed scheme may be inspected; and
- (c) specify a period within which any person may make representations or suggestions to the Attorney General in respect of the proposed scheme.

(3) This section does not apply to the establishment of a scheme if:

- (a) the scheme does not alter the original purposes of the charitable trust and the Attorney General is satisfied that the scheme should be established as a matter of urgency; or
- (b) the value of the trust property affected by the scheme does not exceed \$2,000 or, if another amount is prescribed by the regulations, that other amount; or
- (c) the scheme is established in accordance with a referral from the Court.

**Publication and commencement of schemes**

16. (1) If the Attorney General makes an order under this Part establishing a scheme, the Attorney General must publish in the Gazette or in a newspaper circulating throughout New South Wales a copy of the order or brief details of the order and the address of the place at which a copy of the order may be inspected.

(2) Any such order does not take effect:

- (a) until 21 days after its publication in accordance with this section or such later time as is specified in the order; or

*Charitable Trusts Act 1993 No. 10*

---

(b) if an appeal against the order is duly made to the Court under this Part within that time, unless the order is confirmed or the appeal is withdrawn or lapses.

(3) An order establishing a scheme referred to in section 15 (3) may, despite anything in this section, specify that it takes effect on or at any time after its publication.

**Revocation or variation of schemes**

17. (1) The Attorney General may revoke a scheme established under this Part by a further order published in the same manner as the order establishing the scheme.

(2) The Attorney General may vary a scheme established under this Part by a further order published in the same manner as the order establishing the scheme. The provisions of this Part relating to the establishment of a scheme apply to any such variation of the scheme.

**Appeal from orders of Attorney General relating to schemes**

18. (1) If the Attorney General makes an order under this Part:

- (a) any trustee of the charitable trust concerned; or
- (b) with the leave of the Court, any other person,

may appeal to the Court against the order within 21 days after the order is published under this Part or, with the leave of the Court, at any time after the order is so published.

(2) An appeal is to be made in accordance with the rules of the Court.

(3) The Court may, in determining the appeal, confirm, vary or quash the order.

(4) If the Court quashes the order, it may establish another scheme for the administration of the charitable trust or direct the Attorney General to establish another such scheme in accordance with the directions (if any) of the Court.

(5) A scheme purporting to be established by the Attorney General under this Part may not be challenged because of any alleged contravention of this Part, except in an appeal to the Court under this section.

*Charitable Trusts Act 1993 No. 10*

---

**Register of orders of Attorney General relating to schemes**

19. (1) The Attorney General is to maintain a register of all orders made by the Attorney General under this Part.

(2) The register is to be open to inspection by any person during ordinary office hours.

(3) The regulations may make provision for or with respect to the maintenance and inspection of the register.

**Immunity of Attorney General**

20. The Attorney General has, in relation to any matter or thing done or omitted by the Attorney General in connection with any scheme under this Part, the same immunities from liability as a Judge of the Court would have if the matter or thing were done or omitted by the Court.

**Fees payable to Attorney General**

21. (1) The Attorney General may, by the order establishing or varying a scheme under this Part, charge fees for the costs and expenses (including legal costs and disbursements) incurred by the Attorney General in connection with the establishment or variation of the scheme.

(2) Any such fees may be fixed as a percentage of the value of the trust property affected by the scheme (with or without any minimum fee).

(3) Any fees payable under this section are (unless paid by the applicant for the establishment or variation of the scheme) payable from the trust property concerned.

(4) An appeal may be made to the Court against an order under this Part in connection with the fees required to be paid under the order.

**Determination of value of trust property for purposes of this Part**

22. For the purposes of this Part, the determination of the value of trust property is to be made by the Attorney General. The value is to be determined as at the date of the application for the scheme concerned or any other date the Attorney General considers convenient.

**PART 5—MISCELLANEOUS****Inclusion of non-charitable purpose not to invalidate trust (cf. former s. 37D of Conveyancing Act 1919)**

23. (1) A trust is not invalid merely because some non-charitable and invalid purpose as well as some charitable purpose is or could be taken to



*Charitable Trusts Act 1993 No. 10*

---

be included in any of the purposes to or for which an application of the trust property or of any part of it is directed or allowed by the trust.

(2) Any such trust is to be construed and given effect to in the same manner in all respects as if no application of the trust property or of any part of it to or for any such non-charitable and invalid purpose had been or could be taken to have been so directed or allowed.

(3) This section does not apply to any trust declared before, or to the will of any testator dying before, 1 January 1939, being the date of commencement of the Conveyancing, Trustee and Probate (Amendment) Act 1938.

**Act binds the Crown**

24. This Act binds the Crown.

**Regulations**

25. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**Pending charitable trust proceedings not affected**

26. Nothing in any provision of this Act affects any proceedings relating to a trust that were commenced in the Court before the commencement of the provision concerned.

**Consequential repeals**

27. The following provisions are repealed:

Division 6 of Part 2 of the Conveyancing Act 1919 (**Trusts for charitable purposes**)

Division 3 of Part 3 of the Imperial Acts Application Act 1969 (**Charities**).

**Review of Act**

28. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

*Charitable Trusts Act 1993 No. 10*

---

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

---

[*Minister's second reading speech made in—  
Legislative Council on 11 March 1993  
Legislative Assembly on 21 April 1993*]



