
Charitable Funds Act. 7 ELIZ. II. No. 56,

FUNDS.

- (1) *Charitable Funds Act of 1958* 7 *Eliz. II. No. 56*
 (2) *Treasury Funds Investment Act of 1958* 7 *Eliz. II. No. 70*

7 ELIZ. II.
NO. 56.
THE
CHARITABLE
FUNDS ACT
OF 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.

[ASSENTED TO 11TH DECEMBER, 1958.]

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

Short title.

1. This Act may be cited as "*The Charitable Funds Act of 1958.*"

Meaning of terms.

2. In this Act, unless the context otherwise indicates or requires, the following terms shall have the meanings respectively assigned to them:—

Charitable purpose.

"Charitable purpose"—Every purpose which in accordance with the law of England is a charitable purpose: Without limiting or otherwise affecting the foregoing, the term includes all or any of the following:—

- (i.) 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);
- (ii.) The education or instruction (spiritual, mental, physical, technical, or social) and the reformation, employment, or care of any persons;

1958.

Charitable Funds Act.

- (iii.) 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 ;
- (iv.) The construction, carrying out, maintenance, or repair of buildings, works, and places for any of the purposes aforementioned ;
- (v.) Any benevolent or philanthropic purpose (whether of the purposes before enumerated or not) ;
- (vi.) 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 ;

“ Certifying officer ”—Any certifying officer appointed under and for the purposes of this Act ; Certifying officer.

“ Collection ”—In relation to any fund, the receiving of any property for the fund by all or any of the following means :— Collection.

- (i.) Voluntary contributions ;
- (ii.) The sale of any property voluntarily contributed ;
- (iii.) 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 one 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) ; Contributor.

- Fund.** “Fund”—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: Without limiting or otherwise affecting the foregoing, the term includes the fund raised following an accident which occurred on the Tollbar Road near Toowoomba on the thirty-first day of January, one thousand nine hundred and fifty-five, and known as the “Australia Day Truck Disaster Fund” but does not include any Patriotic Fund within the meaning of **“The Patriotic Funds Acts, 1942 to 1953,”* nor any fund which is not raised wholly or partly by public voluntary contribution;
- Minister.** “Minister”—The Minister for Justice and Attorney-General or other Minister of the Crown for the time being charged with the administration of this Act;
- Persons.** “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.** “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;

1958.

Charitable Funds Act.

“Property”—In relation to any fund, real and ^{Property.} personal property of every description: Without limiting or otherwise affecting the aforegoing, the term includes goods, money, and securities for money;

“Trustees”—In relation to any fund or any ^{Trustees.} 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. (1.) This Act shall apply to funds raised before ^{Application} or after, or partly before and partly after the _{of this Act.} commencement hereof.

(2.) The provisions of this Act shall be in addition to and not in substitution for or diminution of—

- (i.) The provisions of **“The Queensland (Morven Branch) Bush Nursing Association Funds and other Funds Transfer Approval Act of 1931”*;
- (ii.) 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;
- (iii.) 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.

Certifying
officers.

4. (1.) The Governor in Council may from time to time appoint one or more certifying officers for the purposes of this Act.

(2.) Such an appointment may be made under * “*The Public Service Acts, 1922 to 1958,*” in which event the appointee shall hold office under, subject to and in accordance with those Acts.

Any officer of the Public Service may be so appointed and may hold such appointment in conjunction with some other office for the time being held by him in the Public Service.

This subsection applies so as not to limit the power of the Governor in Council to appoint certifying officers.

(3.) Any appointment as certifying officer may be published in the *Gazette* and thereupon shall be judicially noticed.

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

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

5. In any case where—

- (i.) 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
- (ii.) The property available in the fund proves inadequate to carry out such purpose or all or any of such purposes ; or
- (iii.) Such purpose or all or any of such purposes has or have been already effected ; or
- (iv.) 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
- (v.) Such purpose has or all or any of such purposes have ceased to exist ; or
- (vi.) Such purpose is or all or any of such purposes are uncertain or cannot be identified or is or are not sufficiently defined ; or

* 13 G. 5 No. 31 and amending Acts.

1958.

Charitable Funds Act.

(vii.) 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 subparagraph (vi.) of this section, some specified charitable purpose or purposes.

6. (1.) Where, in any case referred to in section five of this Act, 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.

Trustees may prepare and submit schemes.

(2.) In any case referred to in section five of this Act, 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—

When contributors may prepare and submit schemes.

(a) Where the amount or value of the property in the fund in question does not exceed six hundred pounds, 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 six hundred pounds, proceed in the manner set forth in section seven of this Act.

7. (1.) The moving trustee, contributor, beneficiary or person so authorised by the Minister (hereinafter referred to as "the convener") may call together a meeting of the contributors by advertisement in the following manner :—

Convening meeting of contributors.

(i.) The advertisement shall be inserted in one or more of the newspapers circulating in the locality within which the fund was as regards the State wholly or mainly raised by collection ;

- (ii.) The advertisement shall be so inserted at least three times at an interval of not less than seven days between the insertions ;
- (iii.) The day and place of the meeting shall be mentioned therein, the day not to be less than thirty 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 ;
- (iv.) 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 ;
- (v.) 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 ;
- (vi.) 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 chairman of the meeting, previously establish their claim to vote as a contributor to the satisfaction of the claim committee may vote by proxy, and shall also contain a reference to the provisions of subsection two of this section.

Subsequent
notice.

(2.) Any contributor may give notice by advertisement in accordance with subparagraph (i.) of subsection one of this section not less than seven days before the day fixed for the meeting that he 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.

1958.

Charitable Funds Act.

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

Proceedings
at meetings.

(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; seven contributors or one-third 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 chairman:

Provided that if the person so chosen does not establish his 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 chairman.

The chairman 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 three 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 two 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 chairman 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 or 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 two of this section 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 ten days thereafter ;
- (d) The proposer of such new purpose as last aforesaid shall, not less than seven days before the date to which the meeting is adjourned, distinctly specify by notice by advertisement, in accordance with subparagraph (i.) of subsection one of this section, that purpose which he intends to propose at such adjourned meeting ;

1958.

Charitable Funds Act.

(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 three voting contributors.

(4.) The scheme committee shall, within two 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 chairman of the meeting of the resolution adopting the particular purpose or purposes, and also copies of the other proposed purposes as advertised.

Preparation and submission of scheme by scheme committee.

8. (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.

Schemes may provide for new trustees.

(2.) (a) Where the amount or value of the property in the fund exceeds six hundred pounds, 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.

Information to accompany scheme submitted to certifying officer where fund exceeds £600.

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

Powers and duties of certifying officer, &c.

(i.) He may from time to time remit the proposed scheme to the trustees or, as the case may be, scheme committee for amendment if he 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 two 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 he entertains to the scheme as proposed ;

- (ii.) He may report on the scheme submitted and in such event he shall lay such report together with the scheme before a Judge of the Supreme Court, or he may decline to make any such report and in such case allow the scheme to be laid before a Judge aforesaid :

Provided that 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 or Townsville, according as the fund was wholly or mainly raised as regards the State within the Central District, as defined in the First Schedule to **"The Central and Northern Districts Boundaries Act of 1900,"* or the Northern District, as defined in the Second Schedule to **"The Central and Northern Districts Boundaries Act of 1900,"* and in all other cases, in the office of the Registrar of the Supreme Court at Brisbane.

No fee for inspection by public.

(4.) 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.

Advertisement of submission to Judge of scheme.

(5.) 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.

1958.

Charitable Funds Act.

9. (1.) Where at any time in any case referred to in section five of this Act in which the amount or value of the property in the fund exceeds six hundred pounds—

When certifying officer may prepare and submit schemes.

- (i.) 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 seven of this Act; or
- (ii.) At a meeting of contributors convened under section seven of this Act, 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
- (iii.) 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
- (iv.) 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 him under either subsection one of section six or subsection four of section seven of this Act or not, may give notice by advertisement in accordance with subparagraphs (i.), (ii.), (iv.) and (v.) of subsection one of section seven of this Act, that he 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 he invites objections, by letter addressed to him, to his proposal from any trustee, beneficiary, or contributor, and specifying the time within which he 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 one 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 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 ten of this Act, the certifying officer may make such inquiries, by advertisement or otherwise, and may confer or correspond with such persons, as he thinks fit, and may prepare or cause to be prepared a scheme.

(5.) The provisions of subsections three, four and five, of section eight of this Act 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. (1.) Where at any time in any case referred to in section five of this Act, the amount or value of the property in any fund does not exceed six hundred pounds, 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.

10. (1.) Where at any time in any case referred to in section five of this Act, the amount or value of the property in any fund does not exceed six hundred pounds, 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 he deems fit any scheme under this Act submitted to him or he may refuse to adopt such scheme.

If a scheme under this Act has not been submitted to the certifying officer or he refuses to adopt any scheme so submitted, he 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.

If a scheme under this Act has not been submitted to the certifying officer or he refuses to adopt any scheme so submitted, he 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.

1958.

Charitable Funds Act.

For the purpose of enabling a certifying officer to modify or to prepare or cause to be prepared a scheme, he may do any one or more of the things prescribed by subsection two of section thirteen of this Act. Moreover a scheme prepared under this section may include any one 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 subparagraphs (i.), (ii.), (iv.) and (v.) of subsection one of section seven of this Act, that he proposes to deal with the fund, part, or residue under and pursuant to this section, that he invites objections, by letter addressed to him, to his proposal from any trustee, beneficiary or contributor, and specifying the time within which he will receive such objections.

(4.) 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 one month from the date of the first advertisement.

(5.) At any time after the expiration of the time aforesaid, the certifying officer may—

- (i.) Refrain from further dealing with the fund, part, or residue under and pursuant to this section ; or
- (ii.) Subject to having regard to any objections received by him, and to satisfying himself that the scheme is not contrary to law and is within the objects and purposes of this Act, certify the same.

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 paragraph (b) of subsection six of this section be filed in the office of the Registrar of the Supreme Court in accordance with subsection three of section eight of this Act.

Such copy shall be open to inspection by the public without any fee or charge, and an office copy thereof shall be admissible *primâ facie* as proof of the scheme and certificate.

(6.) (a) A certifying officer shall forthwith notify in the *Gazette* the date on and registry in which he has filed the verified copy of the scheme and of the certificate.

(b) Notice of the certification of the scheme and containing briefly the rights of identifiable donors under subsection two of section twenty of this Act shall be advertised by the certifying officer once at least in one or more newspapers in accordance with subparagraph (i.) of subsection one of section seven of this Act.

(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 twenty-one of this Act 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.

Provisions
for costs of
scheme.

11. 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.

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 him for the purpose under the hand of the certifying officer, ascertain and certify the proper amount of those expenses and costs.

The certifying officer shall furnish to the taxing officer such information within his knowledge and belief as the taxing officer requires for the purpose of the reference.

Judge of
Supreme
Court to
have
jurisdiction.

12. (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 him 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 him in support of or in opposition to the scheme or application.

1958.

Charitable Funds Act.

(2.) 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.

Registrar to
obtain
directions.

(3.) This section applies so as not to require any scheme certified by a certifying officer pursuant to section ten of this Act to be brought before a Judge.

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

Judge may
make or
refuse an
order.

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 his 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 subsection one of this section, the Judge may by his order do any one or more of the following things :—

- (i.) Define the charitable purpose or purposes for which the fund or any part or residue thereof shall be deemed to have been established ;
- (ii.) Extend the charitable purposes for which the fund or any part or residue thereof may be applied ;
- (iii.) 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 he may specify, or to a combination of any of such purposes ;
- (iv.) Direct the disposal of the fund or any part or residue thereof by the existing trustees or by such other persons as he 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 ;

- (v.) 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 ;
- (vi.) 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 ;
- (vii.) Divide, in such proportions as he deems fit, the fund, or any part or residue thereof, between different charitable purposes ;
- (viii.) 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 he may direct ;
- (ix.) 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 he deems fit ;
- (x.) Specify any part of the fund for all or any of the foregoing purposes ;
- (xi.) 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 his order and for carrying out the objects and purposes of this Act as he 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 he 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.

Judge may
adopt
certifying
officer's
report.

14. Without derogating from the provisions of section thirteen of this Act, where a certifying officer has made a report on a scheme submitted to him or which has been referred to him by a Judge for a report under

1958.

Charitable Funds Act.

this Act, the Judge before whom the same is laid may adopt such report, and make an order thereon accordingly.

15. 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. No fees payable to Registrar.

16. (1.) Notice that a Judge has made an order approving of any scheme laid before or submitted to him under this Act shall be published in the *Gazette* by the Registrar of the Supreme Court in whose office the scheme is filed. Publication of order of Judge.

(2.) Notice of the approval of the scheme and containing briefly the rights of identifiable donors under subsection two of section twenty of this Act shall also be advertised by the said Registrar once at least in one or more newspapers in accordance with subparagraph (i.) of subsection one of section seven of this Act.

17. Without derogating from the provisions of section thirteen of this Act, 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 he 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, he may refuse to make any order thereon and may give such directions as he deems fit for the making of any other application in relation to the fund. Judge may direct application otherwise than under this Act.

18. (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 ten of this Act, 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 Schemes may be altered and original purpose restored.

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 six hundred pounds an application to a Judge for the modification or variation of such a scheme may be made by any of the following persons:—

- (i.) Any trustee or contributor to the original scheme ; or
- (ii.) Any trustee or contributor to the scheme as last approved ; or
- (iii.) Any beneficiary ; or
- (iv.) A certifying officer.

(3.) A person shall give notice by advertisement in accordance with subparagraphs (i.), (ii.), (iv.) and (v.) of subsection one of section seven of this Act that he proposes to make such an application to a Judge.

The day of the application shall be mentioned in the notice, the day not to be less than thirty 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 subsections three, four and five of section eight of this Act 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. The Public Curator of Queensland may, if he consents to act, be appointed sole trustee, and shall thereupon, subject to the provisions of **The Public Curator Acts, 1915 to 1957*,³ act as trustee with respect to the administration of any scheme approved or certified under this Act.

Public
Curator
may be
appointed
as trustee.

* 6 G. 5 No. 14 and amending Acts.

1958.

Charitable Funds Act.

20. (1.) Subject to subsection two of this section, 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 his identity) shall be taken to have been contributed for the particular and exclusive purpose for which his contribution was solicited and none other, and that there will be a resulting trust in his favour if that purpose fails.

Return of
contribu-
tions.

(2.) (a) 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 his favour, within the time and in the manner provided by paragraph (b) of this subsection, 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 subparagraph (i.) of paragraph (b) of this subsection, may demand from the trustees of the fund the amount of his 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.

(b) Demands under paragraph (a) of this subsection for repayment from the fund of contributions shall be made—

- (i.) Before the expiration of thirty days from the date of publication of the advertisement (or if more than one advertisement, from the date of the first publication) of the notice, required by subsection two of section sixteen of this Act, of the approval by the Judge of a scheme or, in the case of a certification of a scheme under and pursuant to section ten of this Act, of the notice required by paragraph (b) of subsection six of the said section ten :
- (ii.) 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.

(c) Any identifiable contributor having a resulting trust in his favour and who has made a demand within the time and in the manner provided by paragraphs (a) and (b) of this subsection shall be entitled to be paid out of the fund the amount of his 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.

Bona vacantia.

(3.) 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*.

Diversion of fund, &c.

21. 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—

- (i.) 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;
- (ii.) 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

1958.

Charitable Funds Act.

all instruments and do all things necessary for giving effect to this section, and upon doing all the things required by this subparagraph (ii.) and, in an appropriate case, by section twenty-two of this Act, 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 ;

- (iii.) 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 of 1897,”* and, where necessary, the provisions of that Act relating to such an order, with all necessary adaptations thereof, shall apply for this purpose ;
- (iv.) 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. 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 his custody or under his control any books, vouchers, documents, records, agreements, securities, correspondence or any other thing (whether of the classes of things before enumerated or not) belonging

Books, &c.,
to be handed
over to new
trustees.

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 lastmentioned.

Enforcement
of handing
over.

23. 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 subsection seven of section ten, section twenty-one or section twenty-two of this Act, a Judge of the Supreme Court may on application in that behalf—

- (i.) 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 ;
- (ii.) 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.

Audit.

24. (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—

- (i.) If directed by the certifying officer—
 - (a) Upon the submission to a certifying officer under this Act of a scheme relating to the fund ; or
 - (b) When considering the preparation of a scheme under section nine or section ten of this Act ; or
- (ii.) 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.

1958.

Charitable Funds Act.

(2.) Every direction under subsection one of this section—

- (i.) 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 or their last known place of residence or of business ;
- (ii.) May, whether any notification is given under subparagraph (i.) of this subsection or not, be notified in the *Gazette* ;
- (iii.) Shall nominate as auditor either a person registered as a public accountant under **“The Public Accountants Registration Acts, 1946 to 1954,”* or an officer of the Department of the Auditor-General, unless in any case where, owing to the remoteness of the place where the property in the fund is situated or for other good cause, some other person whom the Judge or certifying officer deems competent is so nominated.

(3.) The auditor so nominated—

- (i.) 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 he 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 he may deem necessary ;
- (ii.) 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 opinion, properly drawn up so as to exhibit a true and correct view of the state of the fund

* 11 G. 6 No. 4 and amending Acts.

according to the best of his information and the explanations given to him 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.) (a) 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 his custody or under his control any accounts, other books, vouchers, documents, records, correspondence, agreements or securities relating to the fund, shall as required by the auditor—

(i.) Produce the same to the auditor ;

(ii.) Answer any questions or supply any information with respect thereto or any entry therein.

(b) Any person who—

(i.) Fails to produce when and as required by and under this subsection, any account, other book, voucher, document, record, correspondence, agreement or security referred to in paragraph (a) of this subsection ; or

(ii.) (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 this subsection with respect to any such account, other book, voucher, document, record, correspondence, agreement or security, or with respect to any entry therein ; or

1958.

Charitable Funds Act.

- (iii.) When and as required by and under this subsection 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. (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 subparagraph (ii.) of subsection three of section twenty-four of this Act. Protection of new trustees.

(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. 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. Saving of existing liabilities.

27 Proceedings to enforce the trusts and provisions of any scheme approved or certified under this Act may be taken in the Supreme Court either by *ex parte* petition or Proceedings to enforce trusts.

by summons before a Judge in Chambers, and the Court or Judge may make such orders as it or he thinks fit respecting notice to parties and the hearing of such petition or summons.

Disposal of
Ravenshoe
District
Hospital
Fund.

28. The distribution and disposal of the Ravenshoe District Hospital Fund by the trustees thereof in accordance with the following resolution carried at a meeting of contributors held on the first day of October, one thousand nine hundred and fifty-six:—

“ That donations be repaid to donors on a *pro rata* basis : net funds raised by Ladies’ Committee and Card Club of the fund be distributed on a *pro rata* basis and form part of the main fund for distribution ”,

is hereby authorised and approved and, to give effect thereto, the sum of Four hundred and eighteen pounds eight shillings and two pence received from raffles and functions conducted for the purpose of raising that fund may be appropriated to the making of refunds to the identifiable donors.

Rules of
Court and
practice.

29. (1.) All such Rules of Court, not inconsistent with this Act, as are necessary or convenient for regulating the practice and procedure of the Supreme Court or of Judges thereof for the purpose of carrying out or giving effect to this Act, and, without limiting the generality of the foregoing, in particular for making provision in relation to applications, and notices of the hearing of applications, to commit for contempt of Court, and for the suspension of the issue of committal orders to enable compliance with orders or to enable some particular act or thing to be done, may be made, and the provisions of **“ The Supreme Court Act of 1921 ”* and †*“ The Supreme Court Acts Amendment (Rules Ratification) Act of 1928, ”* shall apply and extend in respect of such Rules of Court.

(2.) The practice and procedure of the Supreme Court shall, except so far as inconsistent with this Act or any Rules of Court hereunder, apply to applications and matters under this Act.

* 12 G. 5 No. 15.

† 19 G. 5 No. 3.

1958.

Charitable Funds Act.

30. Judicial notice shall be taken of every notification published under and pursuant to this Act in the *Gazette*. Judicial notice of *Gazette* notifications.

31. 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. Regulations.

32. (1.) Every Order in Council, regulation and Rule made under this Act shall— Publication of Orders in Council, &c.

- (i.) Be published in the *Gazette* ;
- (ii.) Upon its publication in the *Gazette*, be judicially noticed, and such publication shall be conclusive evidence of the matters contained therein ;
- (iii.) 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
- (iv.) Be laid before the Legislative Assembly within fourteen sitting days after such publication if the Legislative Assembly is in session, and if not, then within fourteen 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 fourteen 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.