

SOUTH AUSTRALIA

PUBLIC CHARITIES FUNDS ACT, 1935

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THE FIRST SCHEDULE ACTS REPEALED

THE SECOND SCHEDULE

PUBLIC CHARITIES FUNDS ACT, 1935

being

Public Charities Funds Act, 1935, No. 2249 of 1935
[Assented to 19 December 1935]¹

as amended by

Public Charities Funds Act Amendment Act, 1940, No. 50 of 1940 [Assented to 28 November 1940]
Maintenance Act Amendment Act, 1965, No. 54 of 1965 [Assented to 23 December 1965]²
Public Charities Funds Act Amendment Act, 1974, No. 122 of 1974 [Assented to 5 December 1974]

¹ Came into operation 1 June 1937: *Gaz.* 25 March 1937, p. 643.

² Came into operation 27 January 1966: *Gaz.* 27 January 1966, p. 145.

N.B. The amendments effected to this Act by the *Financial Sector Reform (South Australia) Act 1999* had not been brought into operation at the date of, and have not been included in, this reprint.

An Act to consolidate certain Acts relating to the investment of charitable funds.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title and commencement

1. This Act may be cited as the *Public Charities Funds Act, 1935*, and shall come into force on a day to be fixed by proclamation.

Consolidation and repeal

2. This Act is a consolidation of the Acts mentioned in the first schedule and the said Acts are hereby repealed.

Interpretation

3. In this Act, unless inconsistent with the context or some other meaning is clearly intended—

"board of management" means the board or other body entrusted with the management of the affairs of a public charitable institution; and in cases where no such board or body exists, then the persons duly appointed to manage such institution:

"commissioners" means the Commissioners of Charitable Funds:

"gift" means any donation of land or other property of any kind, or of any estate or interest therein, and whether given by testamentary disposition or by instrument *inter vivos* or otherwise howsoever made, but does not include a subscription towards the funds of a public charitable institution in a case where any privilege in connection with the institution is given to the donor in consequence of the subscription:

"Minister" means the Minister of the Crown to whom, for the time being, the administration of this Act is committed by the Governor:

"public charitable institution" or "institution" means any of the institutions included for the time being or deemed to be included for the time being in the second schedule:

"repealed Act" means any Act repealed by this Act or by any Act repealed by any such repealed Act.

Proclamation of institution

4. The Governor may from time to time by proclamation declare any public hospital, destitute asylum, lunatic asylum, hospital for the mentally defective, orphanage, reformatory, or other institution of a like character which is established by or pursuant to any Act and supported wholly or in part out of the general revenue of the State to be a public charitable institution. Upon proclamation as aforesaid, the name of the institution shall be deemed to be included in the second schedule.

Power to appoint Commissioners of Charitable Funds

5. (1) The Governor may from time to time appoint any three persons to be Commissioners of Charitable Funds.

(2) Notice of every such appointment shall be published in the *Government Gazette*.

(3) The Commissioners of Charitable Funds appointed under *The Public Charities Funds Act, 1912*, and in office at the commencement of this Act, are hereby continued in office, and shall hold office as if appointed under this Act until their successors are appointed.

Term of office

6. (1) Every commissioner shall, subject to the Governor's power of removal, be appointed for a term of three years.

(2) On the thirtieth day of June in every year the commissioner who has been longest in office without re-appointment shall retire.

(3) Notwithstanding anything in this section any commissioner retiring as aforesaid shall continue in office until his successor is appointed.

(4) Any commissioner shall, on the expiration of his term of office, be eligible for re-appointment.

(5) When the office of any commissioner becomes vacant the Governor may appoint a commissioner to fill the vacancy but if the office becomes vacant otherwise than by expiration of a commissioner's term of office, the person appointed to fill the vacancy shall hold office only for the unexpired portion of the term of office of the commissioner in whose place he is appointed.

Dismissal from office

7. (1) The Governor may, at any time, remove any commissioner from his office—

- (a) for misbehaviour or incompetence; or
- (b) if he is adjudicated bankrupt or makes a statutory assignment for the benefit of his creditors, or compounds with his creditors for less than one hundred cents in the dollar; or
- (c) if he becomes insane; or
- (d) if by reason of invalidity or other cause he becomes incapable of performing his duties.

(2) Notice of every such removal shall be published in the *Government Gazette*.

Commissioners' fees

8. (1) A commissioner shall be entitled to a fee under this section which shall be payable to him at such rate as the Governor may from time to time determine.

(1a) Unless and until the Governor determines otherwise in pursuance of subsection (1) of this section, the commissioners shall be entitled to be paid such fees under this section as are appropriate and have been prescribed for the time being by regulation made under the *Statutory Salaries and Fees Act, 1947*.

(2) The commissioners' fees provided for by this section shall be charged against the various institutions, in the proportions of the amounts of the funds for the time being held by the commissioners to the credit of the institutions respectively.

Commissioners' remuneration

9. (1) In addition to the fee to which he is entitled under section 8 of this Act a commissioner shall be entitled to a fee under this section which shall be payable to him at such rate as the Governor may from time to time determine.

(1a) Unless and until the Governor determines otherwise in pursuance of subsection (1) of this section, the commissioners shall be entitled to be paid such fees under this section as are appropriate and have been prescribed for the time being by regulation made under the *Statutory Salaries and Fees Act, 1947*.

(2) The commissioners' fees provided for by this section shall be charged against any income derived from the Town Acre numbered 86, situated in the City of Adelaide.

Commissioners to be a body corporate

10. (1) The Commissioners of Charitable Funds, hereby continued in office, and their successors, shall continue to be a body politic and corporate by the name of "The Commissioners of Charitable Funds", and by that name—

- (a) shall continue to have perpetual succession and a common seal;
- (b) may sue and be sued; and
- (c) shall continue to be capable to take, purchase, and hold, and to sell, demise, exchange, and otherwise dispose of, all gifts whatsoever made before or after the commencement of this Act to any public charitable institution.

(2) The commissioners shall stand possessed of the said gifts on the trusts hereinafter declared.

Vesting of gifts to charitable institutions

11. (1) All gifts made before the commencement of this Act to any public charitable institution shall continue to be vested in the commissioners for the purposes of this Act, and all gifts made after the said commencement to any such institution shall at once vest in the commissioners for the said purposes without any conveyance, transfer, assignment, or other assurance whatever.

(2) If any property is given by deed, will, or otherwise to any executor, trustee, or other person in trust for any institution, the executor, trustee, or person shall pay over, convey, transfer, assign, or otherwise assure the property to the commissioners in their corporate name and the paying over, conveyance, transfer, assignment, or assurance of the said property shall be a sufficient compliance with the trust aforesaid.

(3) The receipt of the commissioners for the said property or their release therefor shall be a sufficient discharge to any executor, trustee, or person as aforesaid.

Banking account

12. (1) The commissioners shall, for the purposes of their trust, keep a banking account in their corporate name in some bank to be approved by the Minister.

(2) All cheques and orders for the payment of any money by the commissioners shall be signed or authenticated in such manner as the Minister from time to time, by order under his hand, directs. All such cheques and orders shall be a sufficient authority to the bank paying the same for all such payments.

Provision as to moneys received

13. (1) All principal moneys received by the commissioners by virtue of this Act or any repealed Act, shall be paid to the account of the commissioners at such bank as aforesaid, and, subject to such (if any) directions as may be given by the testamentary disposition or other instrument of the donor of any such moneys as to the mode of investment thereof, shall be forthwith invested in the corporate name of the commissioners in some one or other of the modes hereinafter prescribed, for the benefit of the institutions to which they respectively belong.

(2) All interest, dividends, and other profits arising from any such investments, or from any other property held by the commissioners and received by the commissioners, shall also be paid into the same account for investment as aforesaid.

Powers of investment

14. (1) The commissioners shall invest the said principal moneys, and any interest, dividends, and other profits arising therefrom and remaining in their hands from time to time, either in Government securities, on fixed deposit in any bank, in the bonds of the Corporation of the City of Adelaide, in the purchase of freehold land, in the purchase or acquisition of any chattel real or other interest in land, or on mortgage of landed property, with full power to vary and transpose any such investment from time to time for others of a like nature.

(1a) Notwithstanding that any power in that behalf has not been or is not expressly conferred on them by any disposition, instrument or otherwise, the commissioners shall have, and be deemed always to have had, power to accept, take up, subscribe for or otherwise acquire debentures or shares or stock issued by any body corporate in which they already hold debentures, shares or stock for any of the purposes authorized by this Act, if the debentures, shares or stock so accepted, taken up, subscribed for or acquired by them have been or are issued by the body corporate by way of bonus or by way of the exercise of rights or options to take up, subscribe for or acquire the same, by virtue of such holdings; and, for the purpose of exercising any of the foregoing powers the commissioners shall have, and be deemed always to have had, power to invest any moneys held by them for the use or benefit of any general or special trust or for any other purposes of this Act accordingly.

(2) All investments in any such securities made before the commencement of this Act by the commissioners are hereby validated.

(3) All property invested in any manner other than as aforesaid shall be held by the commissioners upon trust to sell and to convert the same into money and to invest the proceeds as hereinbefore in this section provided: Provided that the commissioners may for such time as they think fit postpone the sale and conversion into money of any such property: Provided further that if the trusts upon which the property is accepted by the commissioners require the property to be held in any specified form of investment or in any specified form of investment for any specified time the commissioners shall hold the property in that form of investment or for that period of time, as the case may be. Sections 20 and 21 of the *Trustee Act, 1936*, as amended, shall apply to any sale under this section.

Power to sell lands and invest proceeds

15. (1) The commissioners may sell or exchange any of the land in which any moneys are invested under section 14, and also any other land vested in them by virtue of this Act or any repealed Act, or which may come to their hands in consequence of the foreclosure of any mortgage taken by them: Provided that this power shall not be exercised without the consent of the Minister, to be obtained in manner provided by this section.

(2) The commissioners may represent to the Minister that under the special circumstances of the case a sale or exchange of any such land as mentioned in subsection (1) can be effected on terms which will increase the incomes of the institutions interested therein, or be otherwise advantageous to the institutions.

(3) The Minister may thereupon inquire into the circumstances, and if, after inquiry, he is satisfied that the proposed sale or exchange will be advantageous to the institutions he may authorize the sale or exchange, and give such directions as he thinks fit in relation thereto, and as to the due investment for the benefit of the institutions of the money arising from the sale, or by way of equality of exchange: Provided that no such investment shall be made or altered without the consent of the board of management of every institution interested in the money or investment.

Power to expend money in buildings and the maintenance thereof

16. The commissioners may, out of any moneys vested in them for the benefit of any institution or institutions, expend such portions thereof as they think fit in the erection and maintenance of any building or buildings for the purposes of the institution or institutions, on any lands vested in them for the benefit of the institution or institutions, or on any Government reserve: Provided that—

- (a) no money shall be so expended in the erection of any building without the consent of the board of management of the institution interested in the money, nor without the approval in writing of the Minister:
- (b) no money which has been expressly given for any other special object shall be expended as mentioned in this section.

Power to expend money in making improvements

17. (1) Subject to section 24, the commissioners may, with the consent of the Minister, expend any moneys (whether capital or income) vested in them for the benefit of any institution in the improvement, by the erection of buildings or otherwise, of any freehold land which is vested in them for the benefit of the institution, and which is not for the time being used for the purposes of the institution.

(2) The power hereby conferred is in addition to the power conferred by section 16 to erect buildings for the purposes of an institution.

Power to borrow money for improving land and buildings

18. (1) The commissioners may borrow money for the purpose of making any improvement to any freehold land vested in them which they are authorized to make by this Act.

(2) No money shall be so borrowed without the consent of the Minister.

(3) All moneys so borrowed shall be secured by mortgage over the land.

Powers of leasing

19. (1) The commissioners may lease any such land as mentioned in section 15, or any part thereof, from year to year, or for any term not exceeding ninety-nine years in possession from the making of the lease.

(2) Every such lease shall contain such covenants as are customary or usual, according to the nature of the property demised, and also such special covenants as may be required by the commissioners: Provided that no lease for any term exceeding twenty-one years or containing any right or covenant to purchase by the lessee shall be granted without the consent of the Minister to be first obtained in manner provided by section 15.

Power to obtain surrenders of leases

20. (1) If, in the opinion of the commissioners, it is desirable, in order to obtain greater benefit therefrom, that any improvement should be made to any land which is subject to a lease given by the commissioners, but the improvement cannot be made during the currency of the lease, the commissioners may agree with the lessee for the surrender of the lease. Any sum which is agreed to be paid by the commissioners to the lessee as the consideration or part of the consideration for the surrender shall be paid out of any moneys which the commissioners are authorized by this Act to expend in making improvements to the land.

(2) The commissioners shall not enter into any such agreement for the surrender of any lease unless the Minister consents to the proposed agreement and to the terms thereof.

Powers to accept leases and surrenders of leases

21. (1) In addition to any powers conferred by this Act, the commissioners shall have power upon such terms and conditions as the commissioners think fit—

- (a) to accept the surrender or partial surrender of any lease, underlease, or tenancy:
- (b) to take a lease or underlease of any land or any interest therein.

(2) The provisions of this section shall be deemed to apply to anything done since the seventh day of November, 1912.

Power to apply income and interest

22. Notwithstanding the provisions of subsection (2) of section 13, the commissioners may, with the consent of the Minister, apply from time to time any interest, dividends, or other profits arising from any property vested in them for the advancement and benefit of the institution or institutions interested in the property.

Power to establish endowment fund for Adelaide Hospital

23. (1) The commissioners may set apart and reserve in the endowment fund formerly known as "The Adelaide Hospital Endowment Fund" and now known as "The Royal Adelaide Hospital Endowment Fund" for the benefit of the hospital formerly known as the Adelaide Hospital and now known as the Royal Adelaide Hospital, together with the property set apart in the said fund pursuant to section 4 of the *Public Charities Funds Act Further Amendment Act, 1915*—

- (a) such further part as the commissioners think fit, of the property at the sixteenth day of December, 1915, vested in them under *The Public Charities Funds Act, 1912*, for the benefit of the hospital formerly known as the Adelaide Hospital and now known as the Royal Adelaide Hospital, and the whole, or such part as they think fit, of any property becoming vested in them after the said day under this Act or the said Act for the benefit of the said hospital; and

- (b) the whole, or such part as the commissioners think fit, of the interest, dividends, and other profits from time to time arising from the investment of any of the property referred to in paragraph (a) of this subsection, whether set apart and reserved as aforesaid or not;

Provided that if to set apart and reserve any property or any interest, dividends, or other profits as provided by this subsection would constitute a breach of any trust, express or implied, to which the property or interest, dividends, or profits are subject, then the provisions of this subsection shall not apply thereto.

(2) The said fund set apart and reserved pursuant to this section shall be established for the period from the twenty-eighth day of January, 1916, until the thirty-first day of December, 1950.

(3) The commissioners may during the period referred to in subsection (2) from time to time vary any resolution made pursuant to this section so far as the same relates to the setting apart of the whole or any part of any interest, dividends, or other property referred to in paragraph (b) of subsection (1) and thereafter until subsequently varied by resolution the part, proportion, or amount of the interest, dividends, and other property to be set apart and reserved pursuant to this section shall be the part, proportion, or amount determined in the resolution for variation.

Objects of fund

24. The part of the Adelaide Hospital Endowment Fund set apart and reserved under section 23 shall be reserved for the period for which it is established, and at or after the termination thereof may be laid out and expended by the commissioners for any of the purposes of the hospital formerly known as the Adelaide Hospital and now known as the Royal Adelaide Hospital (including improvements and additions to the buildings, grounds, and other premises used for those purposes, and the furnishing and equipment thereof, as well as the maintenance and working of the said hospital): Provided that where any property forming part of the said fund is, by virtue of any trust, express or implied, to be used for some specific purpose, that property, and all dividends, interest, and other profits arising from the investment thereof, shall be laid out and expended according to the terms of any trusts imposed thereon respectively.

Town Acre No. 86 reserved as an endowment fund in perpetuity

25. (1) Notwithstanding anything contained in sections 23 and 24, the Town Acre numbered 86, situated in the City of Adelaide (which Town Acre the commissioners have, together with other property, set apart and reserved as an endowment fund, to be called "The Adelaide Hospital Endowment Fund", for the benefit of the Adelaide Hospital) shall during the period for which the commissioners have determined that the said fund shall be established continue to be set apart as portion of the said fund, and thereafter shall constitute the said fund in perpetuity.

(2) Nothing in this section shall impose any obligation upon the commissioners to accumulate the revenues derived from the said Town Acre 86, and these revenues may be applied by the commissioners in the manner authorized by this Act.

Provision as to £30 000 paid by the Treasurer for the Adelaide Hospital

26. (1) The commissioners may, out of any property (other than The Adelaide Hospital Endowment Fund) vested in or held by them upon trust for the benefit of the Adelaide Hospital, pay interest at a rate not exceeding five pounds per centum per annum for a period of thirty years on any amount comprised in the sum of thirty thousand pounds paid by the Treasurer pursuant to section 6 of *The Public Charities Funds Act Further Amendment Act, 1915*, for repairs and additions to the buildings and premises of the Adelaide Hospital.

(2) If interest as provided by subsection (1) is paid annually on any such amount for the said period of thirty years, the said amount shall not be repayable to the Treasurer, but otherwise shall be repayable at the termination of the said period out of the said fund, or out of any other property vested in or held by the commissioners under this Act for the benefit of the Adelaide Hospital.

Power to expend moneys for benefit of Northfield Mental Hospital and Enfield Receiving House

26a. Any moneys vested in the commissioners for the benefit of the hospital formerly known as the Parkside Mental Hospital and now known as the Glenside Hospital may at the discretion of the commissioners be expended by the commissioners for the benefit of the hospitals formerly known as the Northfield Mental Hospital and the Enfield Receiving House and now known as the Hillcrest Hospital and the Enfield Hospital respectively.

Power to apply for judicial advice

27. (1) The commissioners may apply to a Judge of the Supreme Court for advice or direction as to any matter or question, other than the propriety of selling or leasing with right of purchase, connected with the management or administration of any property vested in them or received by them by virtue of this Act or any repealed Act in any manner in which a trustee, executor, or administrator may so apply.

(2) The provisions of any Act or of any rules of the said Court under which the commissioners make any such application shall apply to the application and to any order or judgment made therein; and the said Court or a Judge thereof shall have all the powers on the application which it or he would have in an application under such Act or rules.

Power to deduct necessary expenses

28. All expenses incurred by the commissioners in the execution of their duties under this Act or any repealed Act may be deducted by them out of any moneys held by them as trustees for the institution in respect of which the expenses have been or are incurred. If any such expenses are incurred in respect of more than one institution, the commissioners may charge the institutions with ratable amounts of the expenses in proportion to the respective interests of the institutions in the matter.

Officers

29. (1) The commissioners may appoint a secretary and any other officers who may be necessary to enable the commissioners to execute their duties under this Act: Provided that no such appointment shall be made, and no secretary or other officer shall be dismissed, without the consent of the Minister.

(2) The salaries of any person so appointed shall be fixed by the commissioners with the consent of the Minister, and shall be charged against the various institutions in the same proportion as the commissioner's fees are for the time being chargeable.

Commissioners to be subject to jurisdiction of the Supreme Court

30. In the execution of the powers and duties hereby conferred and imposed upon the commissioners they shall be subject to the jurisdiction of the Supreme Court, and be exempt from liability for involuntary losses in the same manner as trustees of private property are so subject and exempt under any laws for the time being in force.

Attorney-General to take proceedings

31. No proceedings for the enforcement of any trust on which the commissioners hold any property or for any declaration as to the validity or invalidity of any such trust shall be instituted against the commissioners unless the proceedings have been first sanctioned by the Attorney-General, and all such proceedings shall be taken in his name as promoting the same for and on behalf of the particular institution in respect of which the proceedings are instituted.

Separate accounts to be kept

32. Proper and separate books of account for each institution shall be kept by the commissioners, and an account in abstract shall be made up by them every year, showing the moneys received and expended by them during the year ending on the preceding thirtieth day of June, and also showing the property held in trust, and specifying the charitable institutions on behalf of which the moneys and property have respectively been so received and expended, or are held, as the case may be.

Audit of accounts

33. The accounts of the commissioners shall, as soon as practicable after the first day of July in every year, be submitted for audit to the Auditor-General, who shall, in respect of the accounts, have all the powers conferred on him by the *Audit Act, 1921*, or any Act for the time being in force relating to the audit of public accounts.

Publication of abstracts and auditor's report

34. The abstract of accounts required by section 32 and the report of the Auditor-General on the accounts of the commissioners shall, as soon as practicable in every year, be published in the *Government Gazette* and be laid before both Houses of Parliament.

Report by commissioners

35. The commissioners shall make an annual report to the Minister showing the manner in which the proceedings have been conducted during the year ending on the preceding thirtieth day of June, and how the trust funds have been expended. Every such report shall be laid before both Houses of Parliament.

Validation of past acts

36. Anything done before the seventh day of November, 1912, shall be as valid as if *The Public Charities Act Amendment Act, 1886*, and *The Public Charities Further Amendment Act, 1890*, had, on the passing thereof respectively, been expressly incorporated with *The Public Charities Act, 1876*, as well as with *The Public Charities Act, 1875*: Provided that nothing in this section shall render invalid anything done before the said day.

Office of commissioners of particular institutions abolished

37. (1) The incorporation under or by virtue of *The Public Charities Act, 1876*, of the Commissioners of the Charitable Funds of any public charitable institution and the office and appointment of every such commissioner shall continue to be determined, abolished, and cancelled.

(2) All the powers, duties, and functions of any commissioners whose incorporation is determined as aforesaid shall continue to be transferred to and shall be exercised and discharged by, the Commissioners of Charitable Funds.

(3) All gifts to and property of an institution which immediately before the seventh day of November, 1912, were vested in commissioners whose incorporation is hereby determined, shall, without any assurance other than this Act, continue to be vested in the Commissioners of Charitable Funds, subject to the provisions of this Act.

Application to bring Town Acre 86 under The Real Property Act, 1886

38. Notwithstanding the provisions of *The Real Property Act, 1886*, no payment to the Registrar-General pursuant to section 201 of the said Act shall be made or required on an application by the commissioners to bring Town Acre numbered 86, situated in the City of Adelaide, under the provisions of the said Act.

SCHEDULES

THE FIRST SCHEDULE
ACTS REPEALED

Number and Year of Act	Short Title
No. 1078 of 1912	<i>The Public Charities Funds Act, 1912.</i>
No. 1160 of 1914	<i>The Public Charities Funds Act Amendment Act, 1914.</i>
No. 1209 of 1915	<i>Public Charities Funds Act Further Amendment Act, 1915.</i>
No. 1465 of 1921	<i>Public Charities Funds Act Amendment Act, 1921.</i>
No. 1553 of 1923	<i>Public Charities Funds Act Further Amendment Act, 1923.</i>
No. 1729 of 1926	<i>Public Charities Funds Act Further Amendment Act, 1926.</i>
No. 2218 of 1935	<i>Public Charities Funds Act Amendment Act, 1935.</i>

THE SECOND SCHEDULE

Institutions that are public charitable institutions for the purposes of this Act.

Royal Adelaide Hospital
 The Queen Elizabeth Hospital
 The Queen Elizabeth Hospital "Mareeba" Rehabilitation Centre
 Modbury Hospital
 Mount Gambier Hospital
 Port Augusta Hospital
 Port Lincoln Hospital
 Port Pirie Hospital
 Wallaroo Hospital
 Whyalla Hospital
 Glenside Hospital and
 Receiving Houses— Paterson House
 Cleland House
 Downey House
 Hillcrest Hospital and
 Receiving Houses— Litchfield House
 Howard House
 Strathmont Centre
 Child Guidance Clinic, Adelaide
 Beaufort Clinic, Woodville
 Carramar Clinic, Parkside
 Mitchell House Clinic, Prospect
 St. Corantyn Psychiatric Clinic, Adelaide
 Diagnostic and Assessment Clinic, Toorak Gardens
 Palm Lodge Hostel, College Park
 Newton Lodge Hostel, Newton
 Marden Hill Hostel, Marden
 Day Centre, Torrensville
 Day Centre, Toorak Gardens
 Magill Home (under control of Director-General of Community Welfare).