

Legislative Council—No 33A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 25 July 2007

South Australia

Julia Farr Services (Trusts) Bill 2007

A BILL FOR

An Act to construe certain testamentary dispositions, trusts and gifts in favour of the Home for Incurables, the Julia Farr Centre or Julia Farr Services in favour of Julia Farr Association; and for other purposes.

Contents

1	Short title
2	Commencement
3	Interpretation
4	Application of Act
5	Dispositions, gifts and related powers to vest in JFA
6	Variation of terms of trust
6A	Maintenance of purposes
7	Alteration of rules of JFA
8	Annual report

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Julia Farr Services (Trusts) Act 2007*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

5 3—Interpretation

In this Act, unless the contrary intention appears—

designated date means 1 July 2009;

designated entity means—

- (a) the Home for Incurables Incorporated, or the *Home for Incurables*; or
- 10 (b) Julia Farr Centre Inc. or Julia Farr Centre; or
- (c) Julia Farr Services; or
- (d) *Julia Farr*;

JFA means the Julia Farr Association Incorporated (a body corporate under the *Associations Incorporation Act 1985*);

- 15 *property* includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not.

4—Application of Act

- 20 (1) This Act applies to a testamentary disposition, trust or gift made or created before or after the commencement of this Act.
- (2) Subject to subsection (3), this Act is in addition to, and does not derogate from, the *Trustee Act 1936*.
- (3) Section 69B of the *Trustee Act 1936* does not apply to a charitable trust to which this Act applies.
- 25 (4) Subsection (3) will expire on the designated date.

- (5) On and after the designated date, references in section 69B of the *Trustee Act 1936* to the original purposes of a trust will, if relevant to an application under that section, be construed after taking into account the operation of section 5 of this Act.

5—Dispositions, gifts and related powers to vest in JFA

- 5 (1) Despite a provision of another Act or law—
- (a) a testamentary disposition in favour of a designated entity will be taken to be a testamentary disposition in favour of JFA; and
- (b) a trust in favour of a designated entity will be taken to be a trust in favour of JFA; and
- 10 (c) a testamentary disposition, trust or fund in favour of the residents, patients or other recipients of services of a designated entity, or for the benefit of residents, patients or other recipients of services at any place or places or facility or facilities owned or operated by a designated entity, or formerly owned or operated by a designated entity, will be taken to be a trust in favour of the residents, patients or other recipients of services, or classes of residents, patients or other recipients of services, nominated by JFA from time to time by resolution of the board of management of JFA; and
- 15 (d) a gift in favour of a designated entity (not being made by testamentary disposition or under the terms of a trust) will be taken to be a gift in favour of JFA.
- 20 (1a) JFA must, in acting under subsection (1)(c), make a nomination that accords, as far as reasonably practicable, with the spirit of the original testamentary disposition, trust or fund.
- (2) Without limiting the operation of subsection (1), a reference in an instrument to a designated entity as trustee will be taken to be a reference to JFA.
- 25 (3) Subsection (2)—
- (a) does not affect the operation of the appointment of a trustee (a *new trustee*) in place of a designated entity before the commencement of this Act; and
- (b) does not allow JFA to exercise a power to remove a new trustee who has been so appointed.
- 30 (4) Nothing in this section operates to defeat the intention reflected by the provisions or terms of a testamentary disposition, trust or gift that provide that, should the beneficiary cease to exist, the testamentary disposition, trust or gift was to lapse or was to be in favour of some other person or body.
- 35 (5) Nothing in this section invalidates the execution, declaration or creation of a testamentary disposition, trust or gift made or effected before the commencement of this Act.
- (6) For the purposes of this section, a reference to a *testamentary disposition* includes a reference to a surrender or release effected by a testamentary disposition.

6—Variation of terms of trust

(1) The purposes for which property the subject of a testamentary disposition or trust referred to in section 5 is to be applied under a trust may be varied by application under this section in the following circumstances:

- 5 (a) if the original purposes, in whole or in part, cannot be carried out according to any directions given and to the spirit of the gift that has been made or the trust that has been created;
- (b) if it is not reasonably practicable having regard to changes in circumstances that have taken place since the constitution of any relevant trust to apply the
- 10 property in accordance with the original purposes;
- (c) if the original purposes, in whole or in part, have ceased to provide a suitable and effective method of using the property.

(2) An application for a variation of the terms of a trust under this section must be made by JFA in a manner and form determined by the Attorney-General.

15 (3) Notice of an application for variation of the terms of a trust under this section must be given as the Attorney-General directs.

(4) The Attorney-General may refer an application to the Supreme Court if the application raises questions that should, in the Attorney-General's opinion, be decided by the Court.

20 (5) If the Attorney-General or the Supreme Court (as the case requires) is satisfied that the variation of the terms of a trust—

- (a) accords, as far as reasonably practicable, with the spirit of the trust; and
- (b) is justified in the circumstances of the particular case,

25 the Attorney-General or the Court may approve the variation and the trust as varied prevails over any inconsistent provisions of a relevant instrument or declaration of trust.

(6) The reasonable costs of an application under this section are payable at the direction of the Attorney-General from the property in question.

(7) In the case of an application decided by the Attorney-General, the costs—

- 30 (a) are to be fixed by the Attorney-General; and
- (b) may include costs payable to the Crown to defray the cost of investigating and deciding the application; and
- (c) may be recovered as a debt.

35 (8) The Attorney-General must keep available for public inspection a register of approvals given under this section.

(9) For the purposes of this section—

- (a) a reference to the original purposes of a trust will be construed after taking into account the operation of section 5, and this section will otherwise operate subject to any provision made under that section; and

- (b) a reference to the original purposes of a trust will be construed after taking into account any other variations made by or under the operation of any other Act or law, including by or under the terms of any declaration made by a court.

5 (10) This section will expire on the designated date.

6A—Maintenance of purposes

Subject to any variation of the terms of a trust under section 6 or the *Trustee Act 1936*, JFA cannot apply any trust or gift for a purpose that is outside the ambit of an object of JFA existing—

- 10 (a) at the time of the commencement of this Act; or
- (b) at the time that JFA becomes the trustee or receives the gift (as the case may be),

whichever is the later in the circumstances of the particular case.

7—Alteration of rules of JFA

- 15 (1) Any rule of JFA that provides—
 - (b) for the manner or circumstances of the winding up of JFA; or
 - (c) for the distribution of any property of JFA on the winding up of JFA,
 may not be altered except with the approval of the Attorney-General.
- 20 (2) This section operates in addition to the requirements of the *Associations Incorporation Act 1985*.

8—Annual report

- 25 (1) The administrative unit of the Public Service that is primarily responsible for assisting a Minister in relation to the provision of disability services in the State must include in its annual report for each financial year a statement that sets out, insofar as is reasonably practicable, the following information, as at 30 March of the financial year to which the report relates, with respect to the persons who are residents of the Fullarton campus on 30 June 2007:
 - 30 (a) the number of persons resident at the Fullarton campus;
 - (b) with respect to the persons resident at a place other than the Fullarton campus, a broad description of the nature of their accommodation;
 - (c) during the preceding period of 12 months—
 - 35 (i) the processes used to plan and implement the relocation of any person to accommodation other than the Fullarton campus;
 - (ii) the number of persons who returned to accommodation at the Fullarton campus, and the circumstances of their return.
- (2) A report under subsection (1) should be prepared in a manner that does not identify a particular person.

(3) In this section—

Fullarton campus means the property that has, until 30 June 2007, constituted the main facility for the designated entities at the corner of Highgate Street and Fisher Street, Fullarton.