

South Australia

Roman Catholic Archdiocese of Adelaide Charitable Trust Act 1981

An Act to constitute a Trust to be known as the Roman Catholic Archdiocese of Adelaide Charitable Trust; to bring certain existing trusts and charitable undertakings under the administration of the Trust; to define the powers, authorities, functions and duties of the Trust; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Roman Catholic Archdiocese of Adelaide Charitable Trust Act 1981*.

2—Commencement

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

3—Arrangement of Act

This Act is arranged as follows:

- Part 1—Preliminary
- Part 2—Constitution of the Trust
- Part 3—Property
- Part 4—General

4—Interpretation

In this Act, unless the contrary intention appears—

appointed day means the day on which this Act comes into operation;

the Archbishop means the Roman Catholic Archbishop of Adelaide for the time being or his nominee or if he is unable to act in his capacity as Archbishop of Adelaide or if there be no Archbishop of Adelaide means the person for the time being administering the Archdiocese or his deputy;

the Archdiocese means the Roman Catholic Archdiocese of Adelaide;

the bodies whose property is vested in the Trust means those bodies named in section 5(1)(a) together with the Roman Catholic Archdiocese of Adelaide Charitable Trust Incorporated or any successor in title;

the Convent of Mercy and *the Sisters of Mercy* means the Convent of Mercy (Adelaide) Incorporated;

conveyance includes transfer;

disposition includes surrender or release;

Goodwood Orphanage means—

- (a) St. Vincent de Paul's Home Goodwood or any home or homes substituted for that Home; and
- (b) property held by the Sisters of Mercy in connection with work for children or others who are being or have been cared for in the home or homes referred to in paragraph (a);

Largs Bay Orphanage means—

- (a) St. Joseph's Home Largs Bay or any other home or homes substituted for that Home; and
- (b) property held by the Sisters of St. Joseph in connection with work for children or others who are being or have been cared for in the home or homes referred to in paragraph (a);

property means real or personal property and includes any estate or interest in real or personal property;

St. John's Boys Home means—

- (a) St. John's Boys Home at Brooklyn Park or any other home or homes substituted for that Home; and
- (b) property held by the Salesians of St. John Bosco in connection with work for children or others who are being or have been cared for in the home or homes referred to in paragraph (a);

the Salesians of St. John Bosco means The Salesian Society Incorporated;

the Sisters of St. Joseph means The Congregation of the Sisters of St. Joseph of the Sacred Heart South Australia Incorporated;

the Trust means the Roman Catholic Archdiocese of Adelaide Charitable Trust constituted by this Act.

5—Objects of the Trust

(1) The objects of the Trust are—

- (a) to take over, promote, maintain and continue the charitable undertakings, purposes or trusts vested in the Catholic Church Indowment Society Incorporated together with—
 - (i) the Sisters of St. Joseph with respect to Largs Bay Orphanage;
 - (ii) the Convent of Mercy with respect to Goodwood Orphanage;
 - (iii) the Salesians of St. John Bosco with respect to St. John's Boys Home,

and such other charitable undertakings, purposes or trusts of the Orders, Congregations, Communities and Associations of the Roman Catholic Church in the Archdiocese and whether relating to families, children, aged, infirm or indigent persons as it may be from time to time expedient or beneficial to vest in the Trust;

- (b) to promote, develop, administer, manage and support with organisational and funding assistance from investments, capital, income, donations, bequests, or such other source of funds as may from time to time be available, such charitable undertakings within the Archdiocese and in particular for the benefit of children who are deprived of a parent or parents and those in need of counselling, accommodation, sustenance, care and control and assistance to those having the legal or moral duty of care of children and such other persons or families as are in need of Christian charity within the Archdiocese;
 - (c) to purchase, sell, have assigned or transferred to it, take on lease, let, lease or exchange or otherwise deal with such real or personal property as may be considered advisable for the purposes of the Trust and to borrow and raise money and to secure repayment thereof upon such assets of the Trust and in such manner as may be determined by the Trustees and for those purposes or any of them to charge or mortgage all or any of the property of the Trust;
 - (d) to co-operate with any department of the Government of the Commonwealth or of any State or any research, institutional or other body for such purpose and in such manner as the Trustees consider conducive to the promotion, attainment or fulfilment of any of the objects of the Trust and further to co-operate with persons and bodies for any of the foregoing objects;
 - (e) to do all things that are incidental or conducive to the attainment of all or any of the above objects.
- (2) The property and income of the Trust shall be applicable only towards the promotion of the objects of the Trust.
 - (3) A certificate under the hand of the Chairman or Secretary of the Trust certifying that the Trust has taken over specified charitable undertakings, purposes or trusts shall be conclusive evidence of the facts so certified.

Part 2—Constitution of the Trust

6—Constitution of the Trust

- (1) There shall be a corporation entitled *The Roman Catholic Archdiocese of Adelaide Charitable Trust*.
- (2) The Trust shall have perpetual succession and a common seal, and may sue and be sued in its corporate name.
- (3) Notwithstanding the provisions of any instrument, the Trust may—
 - (a) acquire, hold, deal with and dispose of property of any kind; or
 - (b) mortgage, charge, or otherwise encumber its property; or
 - (c) borrow moneys for the purposes of the Trust.

7—Membership of the Trust

- (1) The Trust shall be administered by Trustees who shall be—
 - (a) the Archbishop;
 - (b) a nominee of the Archbishop;
 - (c) the Provincial of the Sisters of Mercy Adelaide or her nominee;

- (d) the Provincial of the Sisters of St. Joseph or her nominee;
 - (e) the Provincial of the Salesians of St. John Bosco or his nominee;
 - (f) such other member or members as are co-opted by the Trustees with the prior approval in writing of the Archbishop.
- (2) No person who has attained the age of seventy-five years shall be eligible for appointment as a trustee.
 - (3) A trustee appointed under subsection (1)(f) shall hold office for a term expiring on the thirtieth day of June in each third year following appointment and shall, subject to subsection (2), be eligible for re-appointment.
 - (4) The Archbishop, or a trustee appointed by him to be the Chairman, shall be Chairman of the Trust.
 - (5) In the absence of the Chairman from a meeting of the Trust the trustees present at the meeting shall elect one of their number to act as Chairman at that meeting.

8—Quorum and vacation of office

- (1) Three members of the Trust one of whom shall be the Archbishop or his nominee shall be a quorum for the purpose of any meeting of the Trust and the decision of a majority of the members present and voting at any meeting of the Trust shall be the decision of the Trust.
- (2) A member of the Trust shall be deemed to have vacated office if he—
 - (a) dies;
 - (b) resigns from office by notice in writing to the Archbishop;
 - (c) is physically or mentally incapable of properly carrying out the duties of a member of the Trust and a legally qualified medical practitioner so certifies;
 - (d) ceases to hold the office or appointment by virtue of which he was entitled to become a member of the Trust;
 - (e) is removed by the unanimous vote of all of the other members of the Trust;
 - (f) attains the age of seventy-five years.

9—Casual vacancies

Whenever a casual vacancy occurs in the membership of the Trust the Archbishop may appoint a person to fill the vacancy until the end of the next meeting of the Trust.

10—Common seal

- (1) The members for the time being of the Trust shall have the custody of its common seal.
- (2) The form of the common seal, the wording of the sealing clause and all other matters relating thereto shall be determined by the Trust.
- (3) The common seal of the Trust shall only be affixed to an instrument in pursuance of a resolution of the Trust and every instrument to which the common seal is so affixed shall be signed by the Archbishop and one other member of the Trust.

- (4) An instrument purporting to have been sealed with the common seal of the Trust and purporting to be signed by the Archbishop and another member of the Trust shall be deemed to have been executed in accordance with subsection (3).

11—Form and execution of certain contracts etc

- (1) Any deed, instrument, contract or agreement relating to any property or matter which if made or executed by an individual would be by law required to be in writing under seal may be made on behalf of the Trust in writing under the common seal of the Trust.
- (2) Any instrument, contract or agreement relating to any property or matter which if made by or between individuals would be required to be in writing signed by the parties to be charged may be made on behalf of the Trust in writing by any person acting under its authority.
- (3) Any contract relating to any property or matter which if made between individuals would by law be valid although made by parol only (and not reduced to writing) may be made on behalf of the Trust by any person acting under its authority.
- (4) Any contract which is entered into or any instrument, contract or agreement which is signed on behalf of the Trust shall be deemed to have been entered into or signed with the express authority of the Trust, if it is entered into or signed in accordance with the resolution of the Trust.

12—Execution under seal by agent etc

The Trust may, by writing under its common seal, expressly empower any person, in respect of any specific matter, as its agent or attorney to execute any deed, instrument, contract or agreement on its behalf, and any deed signed by such agent or attorney on behalf of the Trust and under his seal shall bind the Trust and have the same effect as if it were under the common seal of the Trust.

Part 3—Property

13—Vesting of certain property in the Trust

- (1) Subject to this Act, the following property is vested without conveyance in the Trust and shall be administered by the Trust under the provisions of this Act:
- (a) all property that was, immediately before the appointed day, vested in the Roman Catholic Archdiocese of Adelaide Charitable Trust Incorporated; and
 - (b) the Goodwood Orphanage; and
 - (c) the Largs Bay Orphanage; and
 - (d) St. John's Boys Home; and
 - (e) property held by any person or body in trust for the body or institutions referred to in paragraph (a), (b), (c) or (d).
- (2) Property vested in the Trust pursuant to this section that was held immediately before it was so vested in the Trust for use as a place of worship, a residence for the Clergy, a Church Hall, a Children's Home, or any other purpose shall, subject to subsection (3), be freed and discharged from any trusts for any such use to which the property was subject immediately before it was vested in the Trust.

- (3) Subject to subsection (1), the vesting effected by this section shall be without prejudice to—
- (a) any special trust; and
 - (b) any resulting trust; and
 - (c) any trust in favour of a donor; and
 - (d) any reservation, mortgage, charge, encumbrance, loan or lease that immediately before the appointed day affected the property vested.

14—No attornment necessary

No attornment to the Trust by any lessee of land vested in it by this Part shall be necessary.

15—Construction of certain instruments

- (1) To the extent to which, by a deed, will or other instrument that takes effect on or after the appointed day, any property—
- (a) is devised, bequeathed, given, granted, released, conveyed or appointed to any of the bodies in whom the charitable undertakings, purposes or trusts referred to in section 5(1)(a) are vested for, or for the benefit of, or in trust for those charitable undertakings, purposes or trusts or to a person (not being the Trust) for, or for the benefit of, or in trust for, the Archdiocese for those charitable undertakings, purposes or trusts or is declared or directed to be held by any person (not being the Trust) for, or for the benefit of, or in trust for, the Archdiocese for those charitable undertakings, purposes or trusts; or
 - (b) is—
 - (i) recoverable by any of the bodies in whom those charitable undertakings, purposes or trusts are vested or by any person (not being the Trust) on behalf of any of those bodies; or
 - (ii) payable to, or receivable by any of those bodies or any person (not being the Trust) on behalf of any of those bodies,for those charitable undertakings, purposes or trusts,

the deed, will or other instrument shall be construed and take effect as if the reference therein to the bodies in whom the said charitable undertakings, purposes or trusts are vested, or as the case may be, to that person, were a reference to the Trust.

16—Resolution of ambiguities etc

Where by virtue of a provision of this Part a reference to any of the bodies in whom the said charitable undertakings, purposes or trusts are vested is to be read and construed as a reference to any of the charitable undertakings, purposes or trusts referred to in section 5(1)(a) and any ambiguity, obscurity or uncertainty results from construing the reference in accordance with that provision, the Trust (subject to the approval in writing of the Archbishop in that regard) may give such directions as it considers necessary or expedient to construe and resolve the ambiguity, obscurity or uncertainty and the reference shall thereafter be read and construed in accordance with that direction.

17—Handing over of property by incorporated association

- (1) An incorporated association with the consent of the Trust may transfer the whole or part of its undertaking or property to the Trust.
- (2) Where an incorporated association transfers the whole of its undertaking to the Trust—
 - (a) all rights and liabilities of the association vest in the Trust; and
 - (b) a trust or other disposition in favour of the association shall be construed as if it referred to the Trust instead of the association.

18—Power to alter rules of incorporated association

- (1) Notwithstanding anything contained in the rules of an incorporated association the rules may be altered with the consent of the Trust so that any reference to any of the bodies whose property is vested in the Trust is altered to refer to the Trust.
- (2) The rules shall be altered in accordance with the procedure laid down therein as nearly as is practicable and where the rules do not provide for alteration they may with the consent of the Trust be altered for the purposes of this section by an instrument under the seal of the incorporated association.
- (3) Anything to be done by any of the bodies whose property is vested in the Trust for the purpose of altering the rules may be done by the Trust.

19—Evidence

A certificate under the common seal of the Trust to the effect that specified property is held by it upon trust for the bodies whose property is vested in the Trust shall, in all proceedings whether civil or criminal, be *prima facie* evidence that the property so specified is so held.

20—Certain rights enforceable by the Trust

Subject to this Act, where any property is vested in the Trust pursuant to this Act, the Trust shall, in relation to that property, have and be subject to all the rights, powers, remedies, liabilities and obligations and may exercise and discharge, in relation to that property, all or any of the rights, powers and remedies which the person in whom the property was formerly vested or by whom it was had or held would have had and been subject to and might have exercised and discharged in relation to that property had it not been divested from him and vested in the Trust.

21—Registration of interests of Trust in land

- (1) Where the Trust—
 - (a) applies to the Registrar-General to be registered as the proprietor of an estate or interest in land; and
 - (b) furnishes the Registrar-General with—
 - (i) a certificate under the common seal of the Trust to the effect that the estate or interest has vested in the Trust in pursuance of this Act; and
 - (ii) such duplicate certificates of title or other instrument as may be required by the Registrar-General,

the Registrar-General shall, without further enquiry, and without fee, register the Trust as the proprietor of the relevant estate or interest.

- (2) No stamp duty shall be payable in respect of an application or certificate under subsection (1).

Part 4—General

22—Claims for compensation upon compulsory acquisition etc

The Trust may in relation to the exchange, dedication or compulsory acquisition of any property vested in it, make claims for compensation in respect of the property and may agree to and settle any such claims, for such considerations, and on and subject to any terms and conditions, as may appear advisable to it.

23—Receipt for certain moneys

A receipt for moneys payable to the Trust shall exonerate the mortgagee, purchaser or other person by or on whose behalf the moneys are so payable from any liability for the loss, mis-application or non-application of the moneys, if the receipt—

- (a) is executed in accordance with this Act under the common seal of the Trust; or
- (b) is in writing signed by two members of the Trust; or
- (c) is in writing signed by a person or persons duly authorised for the purpose by two members of the Trust.

24—Exoneration from enquiry

No purchaser, mortgagee, lessee or other person dealing with the Trust and neither the Registrar-General nor any other person registering or certifying titles shall, upon any sale, exchange, mortgage, lease or other dealing purporting to be entered into by the Trust, be concerned to see or enquire into the necessity for or the propriety of the exercise by the Trust of its powers or the mode of exercising them or be affected by notice that the exercise of any such power is unauthorised, irregular or improper.

25—Service of documents

The service of any writ, statement of claim, summons or other legal process on the Trust may be effected by serving it upon the Chancellor of the Archdiocese or on any person appearing to be authorised by the Trust to accept service.

26—Trust may act as executor etc

- (1) The Trust may—
- (a) apply for and obtain, or join in applying for and obtaining probate of the will, or letters of administration of the estate, of a deceased person where the Trust has a beneficial interest, vested or contingent, in the estate of that person; or
 - (b) accept appointment, and act, as trustee or co-trustee under and in pursuance of any trust where the trust property is not vested in the Trust by, or pursuant to, this Act and the trust is wholly or partly for the benefit of the Trust,

and may do all things necessary for the exercise or performance of its powers, authorities, duties or functions as executor, administrator, or trustee as the case may be.

- (2) On behalf of the Trust, a member of the Trust or a person employed by the Trust may, if authorised by the Trust for the purpose, swear an affidavit, make a declaration or statement, give security and do any other act or thing that is, by any charter, Act or rule of court, required to be done by a person applying for or granted probate or letters of administration or administering a trust, as the case may be.
- (3) The Trust may—
 - (a) renounce executorship;
 - (b) decline to act as administrator of an estate;
 - (c) retire, or decline to act as trustee of property (not being property vested in it by or pursuant to this Act).
- (4) Any commission or other remuneration earned by the Trust as an executor, administrator or trustee appointed under the authority of this section shall belong to the Trust and shall be used and applied by it for or towards any object or purpose specified or approved by the Trust.

27—Trust may hold property jointly

The Trust may hold or acquire any real or personal property either alone or jointly with another or others as joint tenants or tenants-in-common.

28—Regulations

- (1) The Trust may make, alter and revoke regulations for the control, management and administration of, and dealings with, the property of the Trust.
- (2) A certificate signed by the Chairman or Secretary for the time being of the Trust that specifies in the certificate or an annexure thereto the form of a regulation under subsection (1) and in force on a day specified in the certificate shall be conclusive evidence that the regulation was in force in that form on that day.
- (3) The *Subordinate Legislation Act 1978* does not apply to regulations made under this section.

29—Co-operative use of property

- (1) Where it has been decided in accordance with the regulations and rules of the Trust to enter into a scheme of co-operation with or involving a Church of another denomination or any congregation or activity of such a Church, being a scheme that involves the use of property vested in the Trust, the Trust may, while the scheme of co-operation continues in force, permit that property to be used, managed and administered in connection with that scheme in such manner and upon such conditions as the Trust or any committee appointed by it for the purpose, determines or prescribes, and the proceeds of sale or mortgage or any other dealing with such property and all moneys collected or held in respect of such scheme of co-operation may be paid and applied in such manner as may be determined or prescribed by the Trust or such committee.

- (2) The conditions that the Trust may determine or prescribe under subsection (1) may include conditions with respect to the making of contributions of money for the acquisition, construction, alteration, maintenance or repair of assets vested in or held on behalf of a co-operating denomination or congregation and the giving or taking of such security or charge as may be prescribed by any such scheme of co-operation over any property in respect of any contributions of money or in money's worth made or received pursuant to that scheme and any property of the Trust involved in any scheme, is, to the extent prescribed therein, hereby charged.
- (3) Neither the Registrar-General nor any person dealing *bona fide* and for value with any property vested in the Trust shall be bound to enquire whether any security or charge referred to in subsection (2) exists or be deemed to have notice of, or be bound by, any such security or charge by virtue only of this Act or the existence of any scheme of co-operation under this section and—
 - (a) a conveyance, transfer or other assurance to such a person shall operate as a discharge of any security or charge so referred to, insofar as the property conveyed, transferred or assured would, but for this subsection, be subject to the security or charge; and
 - (b) a mortgage or charge in favour of such a person shall have priority over any security or charge so referred to that affects the property mortgaged or charged in favour of that person.

30—Saving provision

- (1) The provisions of section 29 shall apply to and in relation to all property at any time held by the Trust except to the extent that any such property is held subject to any trust expressly forbidding its use in any manner referred to in that section.
- (2) Subsection (1) shall not prevent the use of property in a manner referred to in section 29 if the property was merely directed to be held on trust for the general purposes of the Roman Catholic Church.

31—Power to alter trusts

- (1) Subject to subsection (2), in every case where by reason of the circumstances subsequent to the creation of the trust, including trusts declared under this section, to which any property vested in the Trust is for the time being subject, it has in the opinion of the Trust become impossible or inexpedient to carry out or observe such trusts, it shall be lawful for the Trust by resolution to declare such its opinion, and by the same or any subsequent resolution to declare other trusts for or for the use, benefit, or purpose of and in accordance with the objects of the Trust or, if that is impossible or inexpedient, for the general use, benefit or purpose of the Roman Catholic Church instead of the firstmentioned trusts, and the firstmentioned trusts shall thereupon by force of the resolution cease and determine and the property shall then be held upon the other trusts.

- (2) The property shall be dealt with for the same purposes as nearly as may be for the purposes for which the property was immediately before the resolution held unless the Trust, by resolution, declares that by reason of circumstances subsequent to the creation of the firstmentioned trusts it is, in the opinion of the Trust, impossible or inexpedient to deal with or apply the property or some part of the property for the same or similar purposes in which case the property or that part of the property may be dealt with and applied for the use and benefit of the Roman Catholic Church for such other purposes as are declared by resolution of the Trust.

32—Indemnification of certain persons

A member of the Trust and any other person, exercising a power or performing a duty pursuant to this Act or pursuant to any resolution or direction of the Trust, his executors and administrators, shall be entitled to be indemnified out of the property of the Trust against all expenses or liabilities incurred by him in connection with the exercise by him of the power and the performance by him of the duty unless incurred in the course of fraudulent or negligent breach of trust.

33—Blending of Trust funds

- (1) Where the Trust holds moneys on trust for different purposes or activities it shall be lawful for the Trust from time to time to invest those moneys or any part or parts of those moneys as one fund and to distribute income arising ratably among the several purposes for which the moneys so invested are held and any loss arising from any such investment shall likewise be borne ratably.
- (2) The Trust may make advances out of the moneys referred to in subsection (1) for any purpose of or relating to the Roman Catholic Church and any sum so advanced shall be deemed an investment of moneys and shall bear interest at a rate fixed by the Trust shall (together with the interest) be a charge on the assets of the Roman Catholic Church.

34—Powers of investment

The Trust unless expressly forbidden by any instrument creating any special trust, may invest any funds in its hands, whether at the time in a state of investment or not—

- (a) in any form of investment in which trustees are by statute authorised to invest trust funds; or
- (b) in any other manner that the Trust thinks fit.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act

Year	No	Title	Assent	Commencement
1981	3	<i>Roman Catholic Archdiocese of Adelaide Charitable Trust Act 1981</i>	26.2.1981	19.3.1981 (<i>Gazette 19.3.1981 p740</i>)