

South Australia

The Wyatt Benevolent Institution Incorporated Act 1935

An Act to provide for the more effectual incorporation of The Wyatt Benevolent Institution Incorporated and to facilitate the carrying out of the trusts of the Will of the late William Wyatt and for other purposes.

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Preamble

WHEREAS The Wyatt Benevolent Institution Incorporated (hereinafter called "the Institution") was on the twenty-third day of May 1881 incorporated under the provisions of the *Associations Incorporation Act 1858* having for its objects the carrying out of the trusts of the intended will of William Wyatt of Burnside in the State of South Australia Gentleman: AND WHEREAS by his will bearing date the twentieth day of December 1883 the said William Wyatt (hereinafter referred to as "the Testator") appointed the Institution to be his Trustee and after making certain specific bequests devised and bequeathed unto the Institution all his real estate and the residue of his personal estate upon trust to realise the same with full power to his said Trustee to postpone for such period as might be deemed expedient the realisation of all or any portion thereof and to invest the proceeds in the investments therein named and out of the rents income interest and yearly produce of his said estate to pay certain legacies and annuities named in his said will: AND WHEREAS by his said will the Testator directed that during the suspense of the sale and conversion of his said real and residuary personal estate or of any estate purchased under the powers therein contained or any part thereof respectively his Trustee should have full power to manage and order all the affairs thereof as regards letting on any terms and for any period whatsoever and whether to commence in the future or not and either on building or improving leases with or without rights of purchase or covenants to purchase or otherwise and on such terms and conditions as regards occupation cultivation repairs insurance against fire receipts for rents indulgences and allowances to tenants and all other matters as his Trustee should think fit: AND WHEREAS by his said will the Testator further directed that subject to the payment of his debts, funeral and testamentary expenses and the annuities and legacies mentioned in his said will his said real and residuary personal estate and the proceeds of the sale conversion and getting in thereof as well capital as income should be held by his Trustee so as to give the fullest possible effect to the several objects thereafter mentioned but that the mode time and manner of application should except where controlled by the trusts and provisions of his said will be in the absolute discretion of his said Trustee who should from time to time determine when and how the same should be applied: AND WHEREAS the Testator defined the objects of the trusts of his said will as follows:

"The objects of the trusts of this my will are to benefit persons above the laboring class who may be in poor or reduced circumstances, by supplying them with dwelling houses at a moderate or at a nominal rental or without payment of any rent or to benefit such persons by any means and in any other way that my Trustee shall deem expedient and the qualifications for participation in the benefits of the said trusts shall be that the recipient of such benefits shall belong to a class above that of a laborer and that he or she shall be in poor or reduced circumstances and of good moral character and conduct and preference shall be given to persons who shall have been resident in the said province for a period of five years and upwards. The religious beliefs or political bias or opinions of any persons shall not affect his or her claim to participate in the said benefits, and it shall rest entirely upon the judgment of my Trustee whether or not any person or persons is or are qualified to be admitted to such benefits. My Trustee may build adapt or otherwise procure and fit up houses and other buildings on any trust lands or premises in Adelaide or within ten miles therefrom for the purposes aforesaid and may dedicate any portion of the said trust lands for the purposes of roads and may layout any of such lands as parks or pleasure grounds to be used in common or otherwise by the recipients of the benefits of the said trusts subject to such regulations as may from time to time be made or prescribed by my Trustee who may in all respects administer the said trust estates moneys and premises in such manner as shall be deemed most advantageous for carrying out the objects of the said trusts."

AND WHEREAS the Testator by his said will directed that if at any time his said Trustee should consider it advantageous so to do it should be lawful for such Trustee to apply to the Legislature of the said State for an Act of Parliament to provide for and regulate the administration of the said Institution in accordance with the trusts of his said will or to provide for the more effectual or certain incorporation of the said Institution or in any way to facilitate the carrying out of the trusts of his said will:

AND WHEREAS the Testator died on the tenth day of June 1886 and probate of his said will was on the twenty-ninth day of June 1886 granted by the Supreme Court of South Australia to the executors therein named: AND WHEREAS since the death of the Testator his estate has been administered by the Institution in accordance with the trusts of his said will: AND WHEREAS all the legacies and annuities given by the said will have been paid and satisfied with the exception of the following annuities:

An annuity of £50 to Constance Strahan Smith of 15 Upper Beulah Hill
Norwood S.E.19 England; and

An annuity of £50 to Mabel Alger in care of H. Hilbery & Son 4 South Square
Gray's Inn London.

AND WHEREAS bequests have heretofore been made and may hereafter be made to the Institution and it is desirable that the trusts upon which such bequests are or may be held should be more particularly defined and that the Incorporation of the Institution should be made more certain and effectual and permanent and the administration thereof more particularly defined by an Act of Parliament of the said State.

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as *The Wyatt Benevolent Institution Incorporated Act 1935*.

2—Interpretation

In this Act, unless the contrary intention appears—

2020 Amendment Act means *The Wyatt Benevolent Institution Incorporated (Objects) Amendment Act 2020*;

Board means the board of Governors for the time being of the Institution;

Institution means The Wyatt Benevolent Institution Incorporated;

land includes all tenements and hereditaments corporeal and incorporeal of every kind and description, and every estate and interest in land;

property includes any thing in action, and any interest in real or personal property (including land);

securities include stocks, funds and shares;

Wyatt Trust means the trusts of the will of William Wyatt.

3—Objects of Institution

- (1) The objects of the Institution are to provide assistance to persons in poor and needy circumstances.
- (2) For the purposes of achieving the objects of the Institution—
 - (a) assistance may be provided by making grants of money to such persons out of the income or capital of the funds or other property of the Institution or in such other manner as the Board may from time to time determine; and
 - (b) the Institution (in addition to the funds and other property under its control) may acquire property by purchase, gift, devise, donation, subscription or otherwise; and
 - (c) preference is to be given to persons who have been resident in South Australia for a period of at least 5 years.
- (3) Money or trust funds held by the Institution immediately before the commencement of the 2020 Amendment Act (including money or other property held as part of the Wyatt Trust) may be applied to or for the purposes of the objects of the Institution after the commencement of the 2020 Amendment Act, despite the fact that such application may be inconsistent with the Wyatt Trust and the objects of the Institution as they existed before that commencement.
- (4) The Wyatt Trust is varied by force of this section to the extent necessary to provide consistency with this section.

4—Continuation of Institution as body corporate

The Institution—

- (a) incorporated on 23 May 1881 continues in existence as a body corporate; and

- (b) has perpetual succession and a common seal; and
- (c) can sue and be sued in its corporate name; and
- (d) has the functions and powers assigned or conferred under this or any other Act.

5—Functions and powers

- (1) The Institution has, in addition to any other powers conferred on it under this or any other Act, all the powers of a natural person.
- (2) Without limiting subsection (1), in exercising its functions and powers, the Institution may—
 - (a) grant, receive, acquire, purchase and hold land; and
 - (b) purchase, accept, acquire, hold, mortgage, let, lease, demise, sell, exchange, transfer, convey, assign, alienate, dispose of and deal with property; and
 - (c) act as the trustee of other funds, accept gifts or donations from a person or body and otherwise receive money or property from a lawful source, including gifts or donations subject to trusts that are not inconsistent with the objects of the Institution; and
 - (d) manage money or other property as the Institution thinks fit and, in doing so, combine funds or other property (including funds or other property subject to separate trusts or held for separate purposes), subject to complying with relevant accounting standards and being able, as appropriate, to separately account for different classes of funds and other property; and
 - (e) apply a benefit, or provide assistance, to persons either directly or indirectly through a third party involved in the provision of services or financial or other support; and
 - (f) build on or improve land for the time being owned by or under the control of the Institution; and
 - (g) do any other thing necessary or convenient to further its objects.

6—Financial provisions

- (1) The assets and income of the Institution or the Wyatt Trust must be applied solely to further the objects of the Institution.
- (2) The assets and income of the Institution or the Wyatt Trust (either wholly or in part) must not be distributed directly or indirectly to the members of the Board except as genuine compensation for services rendered or expenses incurred on behalf of the Institution or the Wyatt Trust.
- (3) The Institution may invest its money or trust funds (either wholly or in part) in an investment or security authorised by law for the investment of trust funds and may vary such investments and securities as the Board thinks fit into or for any other investment or security of a similar nature.
- (4) The Board may, for the purpose of building or otherwise improving land belonging to the Institution, borrow money and secure its repayment by mortgage of the land (or a portion of the land) or in such other manner as the Board may from time to time determine.

9—Management

The Institution shall be managed by a Board consisting of not less than five or more than seven persons. The Board shall have the sole management and control of the affairs of the Institution and may execute, perform and exercise all trusts, duties, obligations and powers in the name and on behalf of the Institution. There shall be a chairman of such Board who shall be elected annually by the members of the Board; the following are the present members of the Board: Charles Richmond John Glover, Henry Simpson Newland, John Harvey Finlayson, William Douglas Taylor, Frederic Theodore Bruce. A member of the Board shall hold office until his retirement, resignation or death.

10—Vacancies in Board

Any vacancy occurring in the Board shall be filled by the remaining members of the Board.

11—Meetings of Board

The Board shall meet on the fourth Tuesday of each month or such other time as shall be determined.

12—Quorum

Three members of the Board shall form a quorum. The chairman of any meeting of the Board shall have a deliberative as well as a casting vote.

13—Officers

The Board shall appoint all necessary officers and shall have power to dismiss, suspend or remove the present and any future officers.

14—By-laws etc

The Board may from time to time make any by-laws rules and regulations not inconsistent with the objects of the Institution for the proper conduct and management thereof and may revoke, alter or amend the same.

15—Seal

The seal of the Institution shall only be affixed in the presence of two members of the Board who shall also sign the document to which the seal is affixed.

16—Validity of acts

An act or proceeding of the Institution or the Board is not invalid by reason only of—

- (a) a vacancy in its membership or a defect in the appointment of a member; or
- (b) the fact that the act or proceeding was done or executed prior to the commencement of the 2020 Amendment Act.

17—Application of other Acts

The *Subordinate Legislation Act 1978* does not apply to a regulation (within the meaning of the *Subordinate Legislation Act 1978*) made under this Act by the Institution or the Board if the regulation relates to—

- (a) the status of the Institution as a deductible gift recipient under a law of the Commonwealth; or
- (b) any other prescribed matter, or matter of a prescribed kind.

18—Interaction with other Acts

This Act is in addition to, and does not derogate from, the *Trustee Act 1936*.

19—Regulations

The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

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 and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1935	-	<i>The Wyatt Benevolent Institution Incorporated Act 1935</i>	12.12.1935	12.12.1935
2020	11	<i>The Wyatt Benevolent Institution Incorporated (Objects) Amendment Act 2020</i>	7.5.2020	7.5.2020

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
ss 2—6	substituted by 11/2020 s 3	7.5.2020
<i>ss 7 and 8</i>	<i>deleted by 11/2020 s 3</i>	7.5.2020
s 16	substituted by 11/2020 s 4	7.5.2020
ss 17—19	inserted by 11/2020 s 4	7.5.2020