Ian Murray and Natalie Silver***

USE OF CY-PRÈS AND ADMINISTRATIVE SCHEMES BY AUSTRALIAN HIGHER EDUCATION PROVIDERS TO END DEAD HAND CONTROL OF CHARITABLE ASSETS

Abstract

Australian higher education providers are recipients of large charitable gifts. Many of these gifts take the legal form of perpetual charitable trusts, creating significant endowment portfolios. However, charitable trusts often contain conditions or restrictions that the donor has placed on the use of the funds, presenting challenges for utilising these assets, particularly when the trust conditions have become impracticable or inexpedient to perform because they no longer reflect contemporary society or institutional practices. As a result, Australian higher education providers are increasingly seeking to amend or remove trust conditions using cy-près and administrative schemes. This paper undertakes a survey of Australian cy-près and administrative scheme cases involving higher education purposes and examines judicial approaches towards scheme applications, including the extent to which the promotion of both testamentary intent and the public interest in the effective use of charitable assets is considered. This survey uses philanthropy in the higher education space as an example of broader trends. In particular, the paper considers whether, in Australia's current regulatory environment that seeks to balance public trust and confidence in the charitable sector with supporting an effective charitable sector, the ancient scheme jurisdiction provides a viable means of enabling higher education providers and other charitable gift trustees to access funds controlled by donors from the grave.

I Introduction

Over the past five years, the University of Adelaide has applied to the Supreme Court of South Australia to vary the terms of a number of charitable trusts for the advancement of education where the trust terms became outdated. One concerned a bequest of $75,000 made in 1979 for research and education in botany to be used as determined by the Chairman of the Department of Botany, which had grown to almost $500,000 because botany was no longer taught as a stand-alone

* Professor, The University of Western Australia Law School.

** Senior Lecturer, The University of Sydney Law School.

subject, and the department and position of Chairman no longer existed.[1] Similarly, an application was made in relation to a bequest from 1950 which was to be used in connection with an agricultural institute that ceased operations in 2002.[2] A further application concerned a trust to establish a Chair in Therapeutics at the Medical School that had insufficient funds to endow a Chair, while another related to a trust to award scholarships in nuclear medicine that had grown to $3.5 million, due to low numbers of applicants.[3] The issues surrounding these large charitable gifts are not unique and continue to arise in the courts with relative frequency, particularly as universities review large charitable gifts that can no longer be utilised.[4]

Many large gifts to Australian universities and other higher education providers take the legal form of charitable trusts, creating significant endowment portfolios. However, donors of large philanthropic gifts often seek to retain some degree of control from the grave over these charitable bequests by imposing restrictions on the use of the funds, which in the case of a perpetual charitable trust may allow the donor to exercise that control for eternity.[5] Trust law requires that trustees adhere to the donor's stated charitable purposes on the basis that, in making a charitable gift through a bequest, donors consider the likelihood that their donation will be governed as they intended. The rationalisation is that by promoting donor intent, donors will be more incentivised to give, resulting in more charitable assets, which will provide greater public benefit.[6]

Yet the perpetual enforcement of charitable trusts can present challenges, particularly when there are changed social or organisational circumstances unforeseen by the donor, rendering it impossible or inexpedient for a trustee to comply with

1 *The University of Adelaide* [2023] SASC 8 ('*University of Adelaide*').

2 *University of Adelaide v A-G (SA)* [2023] SASC 17 ('*University of Adelaide v A-G* (2023)').

3 *University of Adelaide v A-G (SA)* [2018] SASC 82 ('*University of Adelaide v A-G* (2018)').

4 See, eg, *Perpetual Trustee Co Ltd v University of New South Wales* [2023] NSWSC 1061.

5 This has been extensively discussed by United States scholars. See, eg: Evelyn Brody, 'From the Dead Hand to the Living Dead: The Conundrum of Charitable-Donor Standing' (2007) 41(4) *Georgia Law Review* 1183; Susan N Gary, 'The Problems with Donor Intent: Interpretation, Enforcement, and Doing the Right Thing' (2010) 85(3) *Chicago-Kent Law Review* 977; Iris J Goodwin, 'Ask Not What Your Charity Can Do for You: *Robertson v. Princeton* Provides Liberal-Democratic Insights onto the Dilemma of Cy Pres Reform' (2009) 51(1) *Arizona Law Review* 75; Susan A Ostrander, 'The Growth of Donor Control: Revisiting the Social Relations of Philanthropy' (2007) 36(2) *Nonprofit and Voluntary Sector Quarterly* 356.

6 See Evelyn Brody, 'Charitable Endowments and the Democratization of Dynasty' (1997) 39(3) *Arizona Law Review* 873, 942–3.

the restrictions.[7] These problems are exacerbated by the fact that most charitable giving occurs for a mix of egoistic and altruistic reasons, meaning that donors are not necessarily motivated to seek the most efficient achievement of public benefit.[8] In these situations, it is questionable whether giving vehicles that allow donors perpetual control over their wealth provide for the most expedient and efficient use of charitable assets. Further, a legal regime that locks future generations into the distributional choices of earlier generations, such as a scholarship for the 'top male student' at a co-educational government high school,[9] invites disrespect as social mores change and inefficiencies emerge.

Charity law provides a potential solution: the availability of administrative schemes to reform the means by which a (higher education) purpose is pursued and cy-près schemes to reform the (higher educational) purpose itself. In Australia, as government funding for universities and other higher education providers has materially decreased proportionally as a source of funding,[10] accessing funds held in perpetual charitable trusts has become an important institutional response. However, with the passage of time, some of these trusts have become impossible, impracticable, or inexpedient to perform. This may be due to institutional changes, including changes to individual units, courses, degrees, or departments; or societal changes, including more diverse student bodies with different needs, or advances in technology such as shifts to online learning and virtual libraries. The result has been an increase in applications concerning higher education charitable trusts to amend or remove trust conditions using cy-près and administrative schemes.[11]

This paper investigates how cy-près and administrative schemes facilitate (or hinder) the ability of Australian higher education providers to amend or remove trust conditions that no longer reflect contemporary society or institutional practice. It does so both to illuminate the difficulties faced by higher education providers, and also to use the context of educational charitable trusts as an exemplar in considering the broader effectiveness of cy-près and administrative schemes. We examine the state regulatory schemes applying to charitable trusts, which have served to lower the cy-près threshold. We then undertake a survey of Australian cy-près and administrative scheme cases involving higher education purposes to understand how the courts apply cy-près and administrative schemes and to gain a sense of how strongly donor intent is prioritised. The case survey exemplar then serves as a basis to consider whether, in Australia's current regulatory environment that seeks

7 See, eg, Ian Murray, *Charity Law and Accumulation: Maintaining an Intergenerational Balance* (Cambridge University Press, 2021), especially ch 8 ('*Charity Law and Accumulation*').

8 John Picton, 'Regulating Egoism in Perpetuity' in John Picton and Jennifer Sigafoos (eds), *Debates in Charity Law* (Hart, 2020) 53, 59–65.

9 See *Tasmanian Perpetual Trustees Ltd v A-G (Tas)* [2017] TASSC 32 ('*Tasmanian Perpetual Trustees*').

10 Australian Universities Accord Panel, *Australian Universities Accord: Final Report* (Report, December 2023), 276–83.

11 See Appendix.

to balance public trust and confidence in the charitable sector with supporting an effective charitable sector, the scheme jurisdiction provides an effective means of achieving that balance.

II Regulatory Schemes

In Australia, an application to clarify or modify the purposes of a charitable trust or to improve its administration can be made through the state supreme courts' inherent jurisdiction over the administration of charitable trusts or pursuant to statute. The court does so by approving a scheme to regulate the future management and administration of the trust. There are two categories of schemes available to applicants: (1) cy-près schemes, which alter the charitable purposes or ends; and (2) administrative schemes, which vary the administrative means of pursuing a purpose. These schemes are the key 'mechanism[s] by which to prescribe the means to pursue charitable objects and, crucially, to ensure that those objects remain capable of fulfilment over time'.[12]

A *Cy-Près Schemes*

The ancient cy-près doctrine is 'the vehicle by which the intentions of a donor may be given effect "as nearly as possible" in circumstances where literal compliance with the donor's stated intentions cannot be effectuated.'[13] A cy-près scheme is an approved change to the charitable purpose for which property is held.[14] Historically, at general law, a cy-près scheme may be settled by a court where a donor has directed a gift to a charitable object or purpose which has failed, meaning that it has become impossible or impracticable to carry out.[15]

In all Australian states (but not the territories), statute has enlarged or replaced[16] the cy-près doctrine to broaden the grounds on which the original purposes can be varied beyond impossibility and impracticability. The new grounds include circumstances where 'the original purposes have ceased to provide a suitable and effective method of using the trust property', having regard to the 'spirit of the

12 GE Dal Pont, *Law of Charity* (LexisNexis, 3rd ed, 2021) 339 [14.6].

13 Rachael P Mulheron, *The Modern Cy-près Doctrine: Applications and Implications* (Routledge-Cavendish, 2006) 1.

14 See generally Dal Pont (n 12) chs 15–16.

15 *A-G (NSW) v Fulham* [2002] NSWSC 629, [12] (Bryson J), quoting *A-G (England and Wales) v The Governors of the Sherborne Grammar School* (1854) 18 Beav 256; 52 ER 101, 110–11 (Romilly MR).

16 In Western Australia, Edelman J concluded in *Taylor v Princess Margaret Hospital for Children Foundation Inc* (2012) 42 WAR 259, 266 [47] ('*Taylor*') that the doctrine of cy-près had been replaced by a statutory regime under charitable trusts legislation.

trust' ('cessation grounds'),[17] or where it would be 'inexpedient' to carry out the original purposes ('inexpedience grounds').[18] The 'spirit of the trust' encompasses a more abstract conception than the original specific purposes of the trust, being 'the basic intention' or substance underlying the creation of the trust or the making of a gift.[19] It includes regard to the trust's history and the social context of the time at which it was established.[20] Changed social and economic conditions can help show that a particular purpose is inexpedient,[21] or that it no longer provides a suitable and effective method for using trust property.[22] However, it is clear that the statutorily expanded provisions do not apply merely because an amended purpose would be more expedient or would provide a more suitable or effective method.[23] Further evidence is needed, for example demonstrating that societal preferences have changed to such a degree that it can be said that it is no longer expedient or suitable to continue in the old way.

It is worth noting that universities may also have internal mechanisms through which they are able to vary the terms of a trust. For example, the University of Sydney is a statutory corporation and pursuant to its enabling legislation, the University Senate can apply for ministerial approval to vary trust terms on the basis that they are 'impossible or inexpedient to carry out'.[24]

---

17 See *Charitable Trusts Act 1993* (NSW) s 9(1). See also: *Trusts Act 1973* (Qld) s 105(1)(e)(iii); *Trustee Act 1936* (SA) s 69B(1)(e)(iii); *Variation of Trusts Act 1994* (Tas) s 5(3)(e)(iii); *Charities Act 1978* (Vic) s 2(1).

18 See: *Charitable Trusts Act 2022* (WA) s 10(1); *Variation of Trusts Act 1994* (Tas) s 5(2).

19 Dal Pont (n 12) 418–19 [16.11], quoting *Varsani v Jesani* [1999] Ch 219, 234 (Morritt LJ).

20 See: *University of Adelaide v A-G* (2018) (n 3) [12] (Stanley J); *University of New South Wales v A-G (NSW)* [2019] NSWSC 178, [33] (Ward CJ in Eq) ('*University of New South Wales*'); *RSL Veterans' Retirement Villages Ltd v NSW Minister for Lands* [2006] NSWSC 1161, [57] (Palmer J); *Free Serbian Orthodox Church Diocese for Australian and New Zealand Property Trust v Dobrijvic* (2017) 94 NSWLR 340, 385 [217] (Payne JA). See also *Perpetual Trustee Co Ltd v A-G (NSW)* (2018) 17 ASTLR 126, 143–6 [56]–[70] ('*Perpetual Trustee*'), where Leeming JA undertook a review of the cases dealing with the requirement to have regard to the 'spirit of the trust'.

21 *Re Radich* [2013] NZHC 2944, [8]–[11] (Collins J) (the New Zealand provisions are worded similarly to those in Western Australia).

22 See, eg: *Re Peirson Memorial Trust* [1995] QSC 308; *Cram Foundation v Corbett-Jones* [2006] NSWSC 495, [46]–[47] (Brereton J).

23 *University of Adelaide v A-G* (2018) (n 3) 82 [8]–[9]; *Re Trusts of Kean Memorial Trust Fund; Trustees of Kean Memorial Trust Fund v A-G (SA)* (2003) 86 SASR 449, 464 [56], 466 [68] (Besanko J); *Robinson v A-G (NSW)* [2022] NSWSC 996, [37]–[54] (Kunc J) ('*Robinson*'); *McElroy Trust* [2003] 2 NZLR 289, 293 [11], 293–4 [14] (Tipping J) ('*McElroy Trust*').

24 *University of Sydney Act 1989* (NSW) s 25.

B *Administrative Schemes*

The courts and the relevant state Attorneys-General also have the ability to settle administrative schemes where 'a donor has failed to specify the details by which a gift is to be applied for charitable purposes, or the details specified are insufficient for its practical application for these purposes.'[25] The Court's power to make administrative schemes derives from its inherent jurisdiction in respect of charitable trusts, 'to clarify, supplement or alter the machinery for the carrying out of charitable objects.'[26] An administrative scheme therefore differs from a cy-près scheme in that it is an approved change to the mode of administering a charity, rather than its purpose.[27] It is usually sought where there is some uncertainty as to the internal rules of a charity relating to the means to pursue the charitable purpose.[28] However, other descriptions of the circumstances in which an administrative scheme will be settled are broader, referencing circumstances where the current mode is 'inadequate or impractical' to achieve the charitable purpose,[29] or where it appears to the Court to be 'expedient to do so.'[30] While conceptually, the focus of administrative schemes is on means rather than ends, the fundamental legal principle of charitable trusts being able to exist in perpetuity underlies both administrative and cy-près schemes as this 'perpetual dedication to charity requires a mechanism by which to prescribe the *means* to pursue charitable objects and crucially, to ensure that those objects remain capable of *fulfillment* over time.'[31] However, in practice this can sometimes be a difficult distinction for courts to make,[32] not least because many charitable purposes are expressed with a greater level of specificity than, for example, 'the advancement of education', such that the means become somewhat intermingled with the charitable objects.

---

25 Dal Pont (n 12) 338 [14.6]. As to the general circumstances in which administrative schemes are available: see 338–9 [14.6]–[14.7], 342–3 [14.10]–[14.12], cf 343–4 [14.13].

26 *University of Adelaide v A-G* (2018) (n 3) [45]. See also *College of Law Pty Ltd v A-G (NSW)* (2009) 4 ASTLR 66, 68 [7] (Brereton J) ('*College of Law*').

27 For discussion of the differences between (and potential overlap of) cy-près and administrative schemes: see, eg, Mulheron (n 13) 95.

28 See, eg, Dal Pont (n 12) 343 [14.10].

29 *Corish v A-G (NSW)* [2006] NSWSC 1219, [9] (Campbell J) ('*Corish*'). For other cases on broader grounds, see also: *Re University of London Charitable Trusts* [1964] Ch 282, 284–5 (Wilberforce J); *Re J W Laing Trust; Stewards' Co Ltd v A-G (UK)* [1984] Ch 143, 153, 155 (Gibson J); *A-G (England and Wales) v Dedham School* (1857) 23 Beav 350; 53 ER 138, 140 [356]–[357] (Romilly MR).

30 *University of Adelaide v A-G* (2018) (n 3), [46].

31 Dal Pont (n 12) 339 [14.6] (emphasis added).

32 See, eg, Mulheron (n 13) 28–30.

III Case Law Survey

In order to determine how the courts apply cy-près and administrative schemes in relation to universities and other higher education providers, we undertook a survey of Australian cases.

A *Search Methodology*

In August 2023, we conducted a search of cases in state supreme courts involving universities and other higher education providers and cy-près, administrative and variation schemes in three major legal databases: AustLII, CaseBase and Westlaw. The search terms we used were one of 'university' or 'tertiary education' or 'higher education', combined with one of 'cy-près', 'administrative scheme' or 'variation scheme'. The term 'variation scheme' describes the state supreme courts' power to settle cy-près schemes pursuant to statute,[33] as compared to their inherent jurisdiction over the administration of charitable trusts.

We searched cases from 1960 onwards, on the basis that the enactment of the *Charities Act 1960* (UK) in the United Kingdom created a very significant expansion in the grounds upon which cy-près schemes are available, upon which most Australian legislation was loosely modelled.[34] In particular, the cessation grounds and inexpedience grounds that are modelled on the *Charities Act 1960* materially reduce the degree of deference accorded to donor intent.[35] We obtained a total of 166 results. We then took the following steps to exclude the irrelevant results. First, we excluded judgments where the charitable purpose did not include the advancement of higher education.[36] We also excluded cases that did not involve applications for either an administrative scheme or a cy-près scheme. These narrow parameters resulted in 21 cases, which are summarised in the Appendix.

The cases in our survey were decided between 1960 and 2023. Despite its size, the case survey is representative in the sense that our search methodology likely obtained most, if not all, of the relevant cases that were accessible from the

---

33 See the provisions set out at nn 17, 18; *Charitable Trusts Act 2022* (WA) s 12.

34 See above (n 17). Western Australia enacted legislation in 1962; Queensland and Victoria have similar legislation enacted in the 1970s; South Australia's relevant provision commenced operation in 1980; New South Wales enacted legislation in 1993, but previously the *Imperial Acts Application Act 1969* (NSW) had applied; and Tasmania enacted legislation in 1994. There is no statutory scheme legislation in the territories.

35 See, eg, Mulheron (n 13) 109–12.

36 For instance, one case involved a charitable trust for pure research purposes: *Annandale* [1986] 1 Qd R 353. While *University of Adelaide v A-G* (2023) (n 2) concerned a trust for research into botany to be conducted by the Department of Botany of the University of Adelaide and hence is a borderline inclusion, we included the case on the basis that such research conducted by a university would involve higher degree by research students, and so also involves the advancement of education.

primary legal databases. However, it is worth noting that the legal databases do not include decisions made by state Attorneys-General. The legislation in a number of states provides that for small charitable trusts, scheme applications go directly to the Attorney-General.[37] The following observations are therefore based only on decisions made by state supreme courts, with nine cases in the Supreme Court of New South Wales, four in the Supreme Court of South Australia, three in the Supreme Court of Victoria, three in the Supreme Court of Queensland, and one case in each of the Supreme Court of Western Australia and the Supreme Court of Tasmania.

B *General Findings*

The cases we found were dominated by cy-près applications (19 of 21), with administrative schemes requested in five cases. However, in three cases where a cy-près scheme was requested, the court determined that an administrative scheme was more appropriate or required in conjunction, and settled an administrative scheme instead of, or in addition to, a cy-près scheme, showing that although conceptually distinct, in practice it can sometimes be difficult for courts and parties to distinguish between the two types of schemes.[38] The majority of cases concerned testamentary gifts via a bequest in the form of a charitable trust. These gifts tended to be large, representing the residual or entirety of the deceased estate. In the majority of cases, a higher education provider was a party, either as plaintiff/applicant in their capacity as trustee, or as defendant/respondent as a named beneficiary. In all cases the state Attorney-General appeared as a party, and in some of the cases made written and/or oral submissions to the Court. The Attorneys-General generally adopted a neutral position in that they did not oppose the proposed variations, and in some cases, they explicitly supported the application. This is likely a result of the applicant consulting the Attorney-General prior to embarking on the court process. For example, in *Chartered Secretaries Australia Ltd v Attorney-General (NSW)* (‘*Chartered Secretaries Australia*’), Bryson AJ explicitly acknowledged that the New South Wales Attorney-General requested changes before the matter reached court, resulting in the Attorney-General supporting the scheme.[39] It is also notable that in almost all cases the parties’ costs were awarded out of the trust assets.

The reasons for bringing the applications were primarily due to: (1) institutional changes,[40] such as a subject, position and department ceasing to exist,[41] a research

37 See below n 120 and accompanying text.

38 *University of Adelaide v A-G* (2018) (n 3); *Robinson* (n 23); *Kerin v A-G (SA)* [2019] SASC 103 (‘*Kerin*’).

39 *Chartered Secretaries Australia Ltd v A-G (NSW)* [2011] NSWSC 1274, [13] (‘*Chartered Secretaries Australia*’).

40 *Robinson* (n 23) [59] can also be thought of as an example, in that a key reason for the application was that the persons who were trustees and who had a personal connection with Balliol College at Oxford University (in relation to which scholarships were funded) were reaching an age necessitating retirement.

41 *University of Adelaide* (n 1).

institute ceasing to exist,[42] or a change of control of a higher education provider;[43] (2) changes to education and training models (including for priests,[44] nurses,[45] company secretaries,[46] and engineers[47]), and to educational funding models resulting in the type of scholarships offered no longer being as effective;[48] (3) the trust having insufficient or excessive funds to carry out the charitable purpose (including a University Chair that could not be endowed,[49] funds for scholarships that could not be expended due to a lack of applicants,[50] and a research centre and library that could not be established[51]); (4) named charity recipients never, or no longer, existing;[52] and (5) to create administrative and/or governance efficiencies.[53]

The schemes were largely allowed in all but two cases, *Re Meshakov-Korjakin; State Trustees Ltd v Attorney-General (Vic)* ('*Re Meshakov-Korjakin*')[54] and *Kerin v Attorney-General (SA)* ('*Kerin*'),[55] for the reasons stated below. In one additional case, a component of a cy-près scheme requested by an Attorney-General to remove a discriminatory condition was refused.[56] In two further cases, a cy-près scheme was denied, but an administrative scheme settled on the same terms on the basis

42 *University of Adelaide v A-G* (2023) (n 2).

43 *Connery v Williams Business College Ltd* [2014] 17 ITELR 251 ('*Connery*').

44 *The Corporation of the Trustees of the Roman Catholic Queensland Regional Seminary v A-G (Qld)* [2020] QSC 67 ('*Roman Catholic Queensland Regional Seminary*'); *The Banyo Seminary Trust* [2000] QSC 215 ('*The Banyo Seminary Trust*').

45 *Levett v A-G (NSW)* [2014] NSWSC 1787 ('*Levett*').

46 *Chartered Secretaries Australia* (n 39).

47 A cy-près scheme was sought in respect of the first charitable trust considered in *University of Adelaide v A-G* (2018) (n 3) [19]–[27] to remove variation clause limits so as to permit the University of Adelaide to confirm amendments to scholarship terms to remove the need for engineering students to study overseas.

48 *Kerin* (n 38).

49 *University of Adelaide v A-G* (2018) (n 3).

50 Ibid.

51 *King v A-G (NSW)* [2020] NSWSC 629 ('*King*').

52 *Price v A-G (WA)* [2014] WASC 430 ('*Price*'); *Greer v A-G (NSW)* [2018] NSWSC 725 ('*Greer*'). Initial impossibility ended up being the ground for a cy-près scheme in *Connery* (n 43) [63].

53 *College of Law* (n 26); *Robinson* (n 23); *Rechtman v A-G (Vic)* [2005] VSC 507 ('*Rechtman*'); *Equity Trustees Ltd v A-G (Vic)* [2019] VSC 834 ('*MacKenzie*'); *Re Meshakov-Korjakin; State Trustees Ltd v A-G (Vic)* [2011] VSC 372 ('*Re Meshakov-Korjakin*'); *Bisset* [2015] 1 Qd R 211 ('*Bisset*'); *Tasmanian Perpetual Trustees* (n 9), where the Attorney-General also sought the removal of a discriminatory scholarship condition; *Corish* (n 29).

54 *Re Meshakov-Korjakin* (n 53).

55 *Kerin* (n 38).

56 *Tasmanian Perpetual Trustees* (n 9).

that there was no change of purpose.[57] Therefore, in almost all of the cases, trustees were successful in obtaining the changes that they sought.

C *Brevity of Judgments*

One striking aspect of over half of the cases is the brevity of the judgments.[58] Cy-Près and administrative scheme principles are relatively arcane and quite difficult to apply. However, while statutory provisions or prior cases were set out in detail, the actual step of application often took up far fewer paragraphs. There is a sense that the main focus in some of these judgments is arriving at a particular conclusion, rather than explaining how it is arrived at. That sense is reflected in a criticism levelled at the parties in *Robinson*:

> The Court's difficulty with the parties' submissions is twofold … Second, the process of reasoning appears to be that the parties are in agreement that there is a "more efficient and beneficial method for the fulfilment of *the self-same Trust Purpose*" … and therefore, assuming that to be the case, it must follow that the original purposes have "ceased to provide a suitable and effective method of using the trust property"… I accept that s 9 is a beneficial provision which should be interpreted generously and practically. Nevertheless, such an approach is not a licence to disengage completely from the text of the section in order to achieve what might generally be agreed to be a desirable outcome.[59]

In *King v Attorney-General (NSW)* ('*King*'), Hallen J noted:

> The Plaintiff, the Attorney-General, and the University of Sydney (the organisation that agreed to carry out the purpose stated in the Will), all accept that a cy-près scheme is justified and that s 9 of the CT Act is available to the Plaintiff in the present case. It follows that as all are agreed as to the course to be followed, the Court should not lightly stand in the way of a regime which on its face achieves the charitable purpose.[60]

---

57 *University of Adelaide* (n 1) [20]; *Robinson* (n 23) [52]. Cf *University of Adelaide v A-G* (2023) (n 2) [2].

58 See, eg: *University of Adelaide* (n 1); *University of Adelaide v A-G* (2023) (n 2); *Levett* (n 45); *University of New South Wales* (n 20); *The Banyo Seminary Trust* (n 44); *Roman Catholic Queensland Regional Seminary* (n 44); *King* (n 51); *University of Adelaide v A-G* (2018) (n 3); *Rechtman* (n 53); *Price* (n 52); *Greer* (n 52); *College of Law* (n 26).

59 *Robinson* (n 23) [37]–[38].

60 *King* (n 51) [10], citing *Perpetual Trustee Company Ltd v A-G (NSW) (No 3)* [2018] NSWSC 1784, [8]. However, Leeming JA's statement related only to a notice of motion to revise court orders made previously by Leeming JA settling a cy-près scheme. The comments do not relate to the grounds for setting a cy-près scheme, but only to the similarity requirement (and other tests) applied when considering the specific scheme proposed.

It is notable that the reasoning as to whether the grounds for a scheme had been established in several cases — and these were cases involving more than the simple situation of a named beneficiary no longer in existence — was six paragraphs or less.[61] In several cases, there was also no attempt in the reasoning regarding cy-près schemes to identify the difference between varying the original purpose to be more effective from a variation required because the original purpose had ceased to be a suitable and effective method or had become inexpedient.[62] In one, the reasoning was largely as follows:

> The applicant and the first respondent have together sought to identify the best way to use the site as a seminary and university. In the light of the growing and changing demands of the two enterprises being conducted there, the trust deed, as varied by the Relationship Deed, has ceased to provide a suitable and effective method of using the trust property. The variation agreement puts into place a scheme for the effective and suitable use of the land.[63]

In addition, two cases in which a trustee was found to cease to exist after the charitable trust came into existence were treated as cy-près cases without any discussion of whether an administrative scheme to replace the trustee might be the appropriate response.[64]

It is possible that the brevity in judicial reasoning may simply reflect the non-controversial nature of the vast majority of these scheme applications, as evidenced by the state Attorneys-General generally adopting a neutral position in these cases.

D *Cost in Comparison to Quantum of Trust Funds*

In *Equity Trustees Ltd v Attorney-General (Vic)* (‘*Mackenzie*’), McMillan J noted that ‘[t]he legal costs incurred in both this application and the previous cy près application [of over $100,000] represent a significant proportion of the trust’s value’.[65] While a portion of each proceeding to which McMillan J referred concerned matters other than the cy-près application, the cy-près proceedings appear to have

---

61 *University of Adelaide v A-G* (2023) (n 2) [32]–[34]; *Roman Catholic Queensland Regional Seminary* (n 44) [23]–[24]; *University of New South Wales* (n 20) [66] (in relation to the administrative scheme and even as to the cy-près scheme, the application reasoning is only contained in [36]–[38] and [46]–[47]); *The Banyo Seminary Trust* (n 44); *King* (n 51) [43]–[48]; *University of Adelaide v A-G* (2018) (n 3) [15], [25]–[27]; *Rechtman* (n 53) [15]–[17]; *MacKenzie* (n 53) [59], [61]–[62].

62 *University of Adelaide v A-G* (2023) (n 2) [32]–[34]; *Roman Catholic Queensland Regional Seminary* (n 44) [24]; *University of Adelaide v A-G* (2018) (n 3) [25].

63 *Roman Catholic Queensland Regional Seminary* (n 44) [24].

64 *Price* (n 52); *Greer* (n 52). Indeed, *Greer* referred at [21] to *Tantau v MacFarlane* [2010] NSWSC 224 as authority for settling a cy-près scheme when in fact in *Tantau*, the court indicated there would be no need for a cy-près scheme if an alternative trustee could be found.

65 *MacKenzie* (n 53) [62].

constituted about half of the costs, resulting in an estimate of around $25,000 per cy-près application. In present dollars, that is around $30,000.[66] This quantum is consistent with research conducted in Western Australia into amending restricted gifts, suggesting court costs of approximately $10,000, plus initial advice costs.[67]

McMillan J considered these costs 'significant' in relation to a trust corpus of $2.8 million in 2023 dollars.[68] Converting the relevant amounts to 2023 dollars, of the 21 surveyed cases, nine concerned trust funds of $2.8 million or less, one concerned three charitable trusts, one of which was less than $2.8 million and one case did not state the value of the trust fund or provide information (such as reference to large land holdings) suggesting that the value of the trust was above $2.8 million.

E *Balancing Donor Intent with Effective Use of Assets*

As noted earlier, cy-près and administrative schemes are mechanisms used to balance respect for donor intent against the need to more effectively use assets dedicated to charity. Regard to donor intent occurs at several stages. First, the provision of narrow grounds upon which to request a cy-près scheme, which in some instances, refer directly to the 'spirit of the trust'.[69] Second, the application of a similarity test (to the original purposes or means) when determining whether to approve the proposed scheme, applying to both cy-près[70] and administrative[71] schemes.

The cases demonstrate that the courts are mindful of donors' wishes under these two steps, with the vast majority of cases making reference to donor intent whether

66 'Inflation Calculator', *Reserve Bank of Australia* (Web Page) <https://www.rba.gov.au/calculator/annualDecimal.html> ('RBA inflation calculator').

67 Ian Murray et al, *Building Resilience: Utilising Restricted Reserves* (Research Project, 2023) 51–2, 64–5 ('*Building Resilience*').

68 Applying the RBA inflation calculator (n 66) to the $2.4 million trust corpus as at 2019.

69 See above n 17 and accompanying text.

70 This is either because the general law or the legislative provisions refer to a 'cy-près' (as near as possible) scheme: *Charitable Trusts Act 1993* (NSW) ss 9(1), 12(1)(a); *Trusts Act 1973* (Qld) s 105(1)(e)(iii); *Charities Act 1978* (Vic) ss 2(1), 4(3), or to the same concept in plain English: *Charitable Trusts Act 2022* (WA) s 10(2); or because the legislation refers to a scheme according 'as far as reasonably practicable' 'with the spirit of the [trust/original gift]': *Trustee Act 1936* (SA) s 69B(6); *Variation of Trusts Act 1994* (Tas) ss 6(3), 7(5). See also Dal Pont (n 12) 409–13 [16.1]–[16.4].

71 Courts would generally be required, in establishing an administrative scheme, to consider whether the scheme would involve application of the trust fund as nearly as possible in accordance with the intention of the settlor: *The Joyce Henderson Trustee (Inc) v A-G (WA)* [2010] WASC 60, [36] (Hasluck J); *Philpott v St George's Hospital* (1859) 27 Beav 107; 54 ER 42, 43–4 [111]–[113] (Romilly MR); Dal Pont (n 12) 338–9 [14.6], 343 [14.11].

at the stage of determining grounds for a cy-près scheme,[72] or at the similarity stage by reference to applying the gift as close as possible to the donor or testator's original intentions.[73] Indeed, the case survey provides evidence that intent is brought into account at the similarity stage once the question has moved from whether a scheme should be settled to the precise terms of that scheme. That is because, of the 19 instances in which schemes were determined to be available or partially available, five of those cases involved refusal of some components of a scheme, asked for amended wording or requested further submissions on the precise terms to be settled, so as to better accord with similarity requirements.[74] In two further cases, the Attorney-General or the trustee was requested to prepare a detailed scheme.[75] However, some judges also acknowledge that donors could not have predicted changes over time,[76] meaning that talk of donor 'intent' is not always apt when a donor may never have turned their mind to the relevant change.

The extent to which donor intent is taken into account depends on the changed circumstances that have resulted in the scheme application, including: changes to education models; institutional changes; non-existence of a named charity recipient; the trust having insufficient or excessive funds for the stated purpose; achieving administrative or governance efficiencies; or broader changes in social and economic conditions. Each of these are examined below.

F *Changes to Education Models*

Changes to educational models appear to have resulted in requested variations that are characterised as both improving the effectiveness of asset use and as squarely fitting within the original donor intent, at least when viewed at a high level of abstraction. For example, in *Levett v Attorney-General (NSW)*, changing understandings

---

72 See, eg: *University of New South Wales* (n 20) [37], [47]; *Levett* (n 45) [12], [20]; *Chartered Secretaries Australia* (n 39) [18], [24]–[26]; *University of Adelaide* (n 1) [31]–[34]; *Tasmanian Perpetual Trustees* (n 9) [64]–[68]. See also *Roman Catholic Queensland Regional Seminary* (n 44) [22]–[24] (implicit consideration of intent).

73 See, eg: *University of Adelaide* (n 1) [28]; *University of Adelaide v A-G* (2023) (n 2) [31]–[34]; *University of Adelaide v A-G* (2018) (n 3) [32], [41]–[42]; *King* (n 51) [51]–[53]; *Re Meshakov-Korjakin* (n 53) [5], [54]; *Price* (n 52) [14], [27]; *Rechtman* (n 53) [18]; *Bisset* (n 53) [56]; *Tasmanian Perpetual Trustees* (n 9) [52]–[53]; *Kerin* (n 38) [38]–[39], [53]; *Roman Catholic Queensland Regional Seminary* (n 44) [23]–[24]; *Robinson* (n 23) [25], [47]; *Corish* (n 29) [29]. Intention implicitly taken into account in discussion about the desirability of a winding-up clause with greater similarity of objects: *College of Law* (n 26) [13].

74 *Bisset* (n 53), see especially at [53], [55]–[56]; *Tasmanian Perpetual Trustees* (n 9) [42], [46]; *Kerin* (n 38) [38]–[39], [53]; *College of Law* (n 25) [13]; *Corish* (n 28) [29]. In two other cases very minor changes were made to the proposed scheme wording, but for matters of practicality, not similarity with the original intent: *Chartered Secretaries Australia* (n 39) [28]; *Price* (n 52).

75 *Connery* (n 43); *Robinson* (n 23).

76 For particularly explicit examples, see: *University of Adelaide v A-G* (2023) (n 2) [32] (McDonald J); *Levett* (n 45) [20] Nicholas JA.

of nursing terminology over time meant that scholarships were being provided to a narrower class of persons than originally envisaged when 'nursing' would have incorporated aspects of midwifery.[77] Changing approaches to education also meant that part-time and distance education options had become more widely used. Acting Justice Nicholas found that the changes to expressly include midwifery students and to permit scholarships for a wider range of course delivery models, were both within the spirit of the trust *and* enabled the more effective use of trust assets.[78] His Honour reasoned:

> [T]he effect of the alterations enables the Trust to proceed with the general purpose of encouraging, assisting, and promoting nursing education as a benefit to the nursing profession with regard to the modern realities of the nature of the nursing profession and the methods of delivery of nursing education.[79]

A similar approach is either explicit[80] or implicit[81] in the reasons given in the other cases dealing with changed educational models. However, not all cases relating to changes in educational models resulted in approval of the proposed scheme. *Kerin* concerned a trust where one of the purposes was the provision of scholarships to assist students in financial difficulty residing in isolated farming areas to undertake secondary or tertiary study.[82] The trustee argued that increased government and philanthropic support for education of rural and remote students alongside increased educational costs, meant that the low value general educational scholarships offered to these students were no longer as effective. Instead, support should have been provided by informing students about educational and scholarship opportunities, rather than (or in addition to) directly providing scholarships.[83] The variation also sought to narrow the range of fields of study promoted or supported by scholarship to agriculture and related fields. Justice Nicholson refused these aspects of the scheme on the basis that the proposed changes diverged too far from the spirit of the trust and the testator's intentions,[84] highlighting that sometimes a change will stray so far from the original trust terms that it is seen as going beyond even the broad and flexible spirit of the trust. *Kerin* thus serves as a warning about the two stages at which intent is considered: the grounds stage and the similarity stage. While courts

77 *Levett* (n 45) [12]–[14].

78 Ibid [17]–[18], [20].

79 Ibid [20].

80 *Chartered Secretaries Australia* (n 39) [18], [24]–[26]. Arguably, the approved variation of the scholarship period in *Tasmanian Perpetual Trustees* (n 9) to extend beyond two years of a university degree was to reflect changes in the cost of university degrees. Justice Wood expressly found that failing to permit an extended period would 'defeat the purpose of the trust' at [42].

81 In *Roman Catholic Queensland Regional Seminary* (n 44) [23]–[24], Davis J also interpreted the reasoning of the earlier decision *The Banyo Seminary Trust* (n 44) as involving the advancement of intent as well as more effective use of assets.

82 *Kerin* (n 38).

83 Ibid [21]–[23], [34], [37].

84 Ibid [38]–[41], [53].

might be more willing to accept that changed education models provide grounds for a scheme, they will still look closely at the particular scheme proposed to consider whether it is sufficiently close to the original purpose and spirit of the gift.

G *Institutional Changes*

The approach adopted in most cases involving changes to educational models, can also be seen in cases relating to institutional changes.[85] For instance, in *University of Adelaide v Attorney-General (SA)* (2023), McDonald J notes:

> [T]he evolution of science and technology that has occurred over the last 70 years is not something that [the donor] could have predicted. Certainly concepts of climate change, urbanisation and environmental degradation were not in the contemplation of those working and studying in agricultural science in 1950.
>
> It is apparent from the initial terms of the Mortlock Bequest, and the circumstances in which it was made, that the variation sought reflects the original purposes of the trust. I accept … "that through the effluxion of time, the scheme in the Will does not now operate beneficially for the purposes of the bequest, and the interests of the charity can be better promoted by an altered scheme, consistent with more modern usage". The proposed trust variation scheme does no more than reflect the manner in which science and the operation of the [relevant research institute] evolved over time.[86]

This passage shows that where circumstances have changed in ways that are harder for the trust creator to predict, the courts are more willing to characterise terms of the gift relating to those changed matters, as not being fundamental to donor intent, or to the spirit of the trust. Similarly, in *Chartered Secretaries Australia*, Bryson AJ stated:

> It has not become impossible to administer the trust in accordance with the provisions of the will, but there would be marked disadvantages in attempting to do so. There are likely to be few graduates who wish to proceed immediately to training of the kind referred to [in the will]: there will be some, and there is a significant risk that an attempt to administer the trust would lead to decisions to grant scholarships for study purposes which moved further and further away from the training referred

---

85 *University of Adelaide v A-G* (2023) (n 2) [33]; *University of Adelaide* (n 1) [28]; *Robinson* (n 23) [25], [52]–[54], [76]–[77]. Acceptance that the University would use an amended variation power to enable altered scholarships for engineering students, to enable a more beneficial use of assets suggests a focus on effectiveness, in a context where it seems to have been accepted that this would have fallen within the intent of the donor: *University of Adelaide v A-G* (2018) (n 3) [21], [25], [27]. While *Connery* (n 43) also involved institutional change, part of the reason for those changes was the ambiguity of the original gift terms, resulting in a finding of initial impossibility. A cy-près scheme was settled to validate past trustee actions, but for the future, the Attorney-General was directed to establish a scheme, hence the court did not have to consider similarity requirements.

86 *University of Adelaide v A-G* (2023) (n 2) [32]–[33].

> to in the will. To pay regard of the spirit of the trust requires adopting a method of using trust property in which it truly is used, and does not remain unused except in relatively rare instances, nor remain accessible only to very small number of post-graduate students.[87]

H *Non-Existence of a Named Charity Recipient*

In contrast to the approach above, in cases involving applications for schemes based on the non-existence of a named charity recipient, the question of balancing or aligning effective use of assets and settlor intent tends not to arise, given the focus is simply on finding replacement organisations with similar purposes.[88]

I *Trust Having Insufficient or Excessive Funds for the Stated Purpose*

In circumstances where the trust property has become too little or too much for the stated purpose, the focus on intent arises largely in relation to the similarity test.[89] In this context, the judgments readily find that there are grounds for settling a cy-près scheme without the need to inquire into intent, with the focus aimed at achieving the effective use of trust property, provided that use is broadly aligned with the spirit of the trust. In other words, settlor intent is largely subordinated to the goal of effective use of assets. For instance, in *King* Hallen J stated:

> The Plaintiff submits that the proposal to grant scholarships or fellowships in the name of the deceased to support research and study at the University of Sydney on religion, or religious experience, as related to aesthetics, creativity and the arts, is broadly consistent with the deceased's paramount intention — and the spirit of the Will more generally — for the promotion of research, education and development of an arts-based conception of modern religion. It also accounts for the reality that the estate has now been liquidated and is in cash. The proposed scheme is appropriately connected to the amount to be held on trust.
>
> The Attorney-General also submits that the Court could be satisfied that the scheme proposed satisfies this requirement, insofar as it will facilitate study and research on the subject of religion or religious experience "as related to aesthetics, creativity and the arts". While such study or research will presumably not necessarily, or not only, involve "arts-based religion" (the term used in Clause 4 of the deceased's Will), that term remains somewhat obscure, and the study and research that will be funded will evidently concern the intersection between religion and the arts.[90]
>
> I respectfully agree with the submissions made by both counsel.

87 *Chartered Secretaries Australia* (n 39) [25].

88 *Price* (n 52) [14], [27]; *Greer* (n 52) [21], [23].

89 *University of Adelaide v A-G* (2018) (n 3) [32], [41]–[42]; *King* (n 51) [51]–[53].

90 *King* (n 51) [51]–[53].

In *University of Adelaide v Attorney-General (SA)* (2018) (a case relating to three separate charitable trusts, two of which involved trust assets being too little or too large), Stanley J reflected this prioritisation of effectiveness of trust assets in relation to one trust:

> The variation of a trust intended to fund a scholarship for post-graduate students, to also fund an academic fellowship (a comparatively senior position), is a significant alteration.
>
> This is, to an extent, ameliorated by the draft variation scheme retaining as one of its purposes the option of funding post-graduate scholarships from time to time (instead of annually), in addition to the funding of "one or more academic fellowships". The Attorney-General submits that it might, however, more closely accord with the spirit of the gift if the draft scheme were to be expressed to make it clear that only one fellowship, but one or more scholarships, could be awarded. I am not attracted to that course. I am not persuaded that the imposition of such a limitation is necessary or desirable in order to accord with the spirit of the trust.[91]

J *Achieving Administrative or Governance Efficiencies*

The above approaches can be contrasted with cases where scheme applications were made due to the desirability of achieving administrative or governance efficiencies. In these circumstances, courts seemed far more conscious of balancing donor intent and the effective use of assets, acknowledging that the two could be in conflict. For instance, in *University of New South Wales v Attorney-General (NSW)*, Ward CJ in Eq noted:

> The spirit of the IH Trust is clearly to provide for the erection, establishment and administration of a place of residence for overseas and Australian students of the University. It is also clear that the stipulations as to independence from the University of the management of the College were considered to be of importance in furthering that objective.
>
> There can be no doubt that there is a tension between the requirements of independent management and control on the one hand and the responsibilities and overall supervision of the University on the other.[92]

The reference to 'independent management and control' reflects donor intent, while the capacity for and manner of overall university supervision relates to the effective use of assets.[93] The requirement for independent management and control of the international student residence, UNSW International House, had resulted in years of disputes and previous litigation due to the overlapping governance responsibilities of the residence manager and the University. Ultimately, Ward CJ found that

91 *University of Adelaide v A-G* (2018) (n 3) [40]–[41].

92 *University of New South Wales* (n 20) [37]–[38].

93 Ibid [38].

the administrative inefficiencies and governance hindrances sufficiently serious that the requirement for independent management and control had 'ceased to provide a suitable and effective means of using the trust property', providing grounds for a cy-près scheme.[94] At the similarity test stage, Ward CJ also appeared to accept that significant (but not complete) watering down of independent management was justified so as to reduce the costs of management and to enhance the student experience.[95]

In other cases where the trust terms were leading to governance impasses,[96] or material administrative inefficiencies,[97] the effective use of assets was also typically prioritised over adherence to donor intent as expressed in the trust terms. In some instances, the trustee was unable to provide evidence that a desired administrative change was material — and a scheme was refused in relation to that change. For instance, where the trustee argued that income would be insufficient in the future, requiring it to access capital, yet the financial evidence suggested that the trust fund was growing at a healthy rate, with significant reserves of retained income from previous years;[98] or where trustees sought additional specific investment powers, which were considered unnecessary because of the broad investment powers provided under trustee legislation.[99]

However, this was not always the approach adopted. *Re Meshakov-Korjakin* involved an application for an administrative scheme by the University of Melbourne, on the basis that it would be more administratively efficient for the University to manage and invest the trust funds, to provide scholarships in the same manner

94 Ibid [47].

95 Ibid [3]–[4], [62]–[64].

96 *MacKenzie* (n 53) [59]. In this case, a government body named as a member of a scholarships, prizes and grants selection committee notified the trustee that it would not continue as a member of the committee, due to perceived conflicts of interest.

97 Ibid [61]–[62] (relating to further variations to the committee membership provisions to include a clause enabling the trustee to substitute members as required, in order to avoid the costs of bringing further scheme proceedings); *Rechtman* (n 53) [16]–[17]; *Bisset* (n 53), although note at [56] that donor intent may be taken into account in applying similarity requirements to select the most appropriate cy-près scheme. In *Tasmanian Perpetual Trustees* (n 9) [44]–[46], [53], while refused in respect of some other changes, a cy-près scheme was approved, by reference to overcoming material administrative impediments in relation to changes to provide discretion to the trustees, to refuse funding for a particular university course and, in fixing a cap for scholarship payments. A number of administrative schemes were settled on the basis that the means set out in the trust had become 'inadequate or impractical': see, eg, *Robinson* (n 23) [59]. Or to significantly improve the 'practical operation of the fund' or it is 'desirable for the administration of the Trust': see *Corish* (n 29) [18]. Or to address 'difficulties in [the trust's] administration' and to help with gaining accreditation status as a higher education provider and 'facilitate commercial dealings with third parties': see *College of Law* (n 26) [8], [12].

98 *Tasmanian Perpetual Trustees* (n 9) [47]–[49].

99 *Corish* (n 29) [20]–[22].

as its other scholarship funds, rather than receive income from the trustee each year.[100] However, Mukhtar AsJ found that while it might be more efficient for the University, the University was not the trustee and it was not clear that it was inexpedient or inefficient for the trustee to pay trust income to the University.[101] To follow the University's approach would be inconsistent with the testator's intentions and would split the trust in half (implicitly leaving any claimed inefficiencies in place).[102] It would place the University in a potential position of conflict in having to determine whether it had met certain conditions in order to receive the trust income, and raise issues with respect to an individual also potentially having a contingent interest in the trust funds, if an accumulation provision failed for perpetuity reasons.[103] In essence, the administrative inefficiency here was that of a recipient of trust income, not administrative inefficiency of the trust itself.

K *Broader Changes in Social and Economic Conditions*

Tasmanian Perpetual Trustees v Attorney-General (Tas) involved a request for a cy-près scheme, not only in relation to administrative efficiencies, but also broader changes in social and economic conditions.[104] Consistent with the general approach to administrative efficiencies, the Court gave significant consideration to donor intent.[105] The Attorney-General sought a cy-près scheme variation of a scholarship trust to remove a gender condition that the recipient be male.[106] The Attorney-General argued that the gender condition was 'jarringly discordant with contemporary values' and that the condition had become 'inexpedient' because widely accepted social norms of gender equality were 'so pervasive that the inconsistency constitutes continued administration on present terms as being "unsuitable, inadvisable or inapt"'.[107] Justice Wood noted the (often stated, not always followed) distinction between a trust condition being inexpedient, as opposed to a proposed change being merely expedient.[108] While Wood J accepted that gender equality was a societal norm, her Honour downplayed its impact in three ways, two of which were linked to donor intent. First, Wood J noted that the norm was an 'aspirational standard' in a number of areas.[109] The second, linked to donor intent, was that her Honour considered that societal expectations of testamentary gifts were less demanding than expectations of government actions, such that:

100 *Re Meshakov-Korjakin* (n 53).

101 Ibid [65]–[66].

102 Ibid [5](f)–(g), [65]–[75].

103 Ibid.

104 *Tasmanian Perpetual Trustees* (n 9).

105 Ibid [55], [60].

106 Ibid [54] (in respect of the gender condition, the trustee was neutral).

107 Ibid [55], [60], quoting *McElroy Trust* (n 23).

108 Ibid [56]–[59].

109 Ibid [63].

> There is an understanding that a testator's selection of a charitable purpose is necessarily informed by his or her life experiences, perspectives and perception of need.[110]
>
> The discord with societal standards and the sense of grievance or unfairness will be muted by knowledge that the scholarship is funded by a bequest.[111]

The third factor was the importance of upholding donor intent:

> In making the necessary value judgment the Court must take into account an important value, that of 'respect for the intentions of a settlor'. The courts intervene only if it is clearly warranted. The purpose of the charitable trust to benefit male students is central to the terms of the will and the charitable object; the criterion of gender is repeated and appears in the guiding principles regarding the scholarship. It was clearly intended to be unalterable. There is a public interest in charitable gifts generally and respecting testamentary freedom and the primacy of testamentary wishes. Obviously, defeating testamentary intention too readily will discourage these gifts.[112]

Although not expressly noted in the judgment, it may have been relevant that the testator made his will in 2003 and died in 2012, such that it was harder to argue that societal norms had changed considerably in ways unexpected by the testator.

When viewed as a whole, these cases reveal that, in general, judges are adopting a permissive and pragmatic approach to trust variation by focusing on the charity's present needs. This permissive approach to trust variation by the courts has implications for charities other than higher education providers in accessing assets held in charitable trusts. At the same time, it calls into question the appropriateness of the current regulatory regime, with its heavy reliance on the courts, for varying charitable trusts. Accordingly, the next section will examine the existing regulatory regime in Australia.

IV Evaluating the Existing Regime

The provision of higher education is a highly regulated activity, with regulation significantly focussed on quality, fairness and safety.[113] It is undertaken by universities and other higher education institutions with quite different financial capacities, and with longer-term funding pressures due to decreasing government funding contributions, geopolitical risks and the impacts of COVID-19 dampening international

110 Ibid [64].

111 Ibid [66].

112 Ibid [68].

113 Ian Murray, 'How do we Regulate Activities within a Charity Law Framework Focussed on Purposes?' (2020) 26(2) *Third Sector Review* 65, 72–3 ('How do we Regulate Activities').

student income.[114] Accessible philanthropic funds are thus greatly valued. Higher education activities are also undertaken in an environment that involves a number of major social, economic and environmental changes, such as changes in digital technology and artificial intelligence, demographic growth in outer suburban and regional areas, changing combinations in needed skills and knowledge, and global and regional geopolitical structures.[115]

However, higher education providers are not unique in these respects. A range of activities, such as the provision of health, primary and secondary education, and aged care, are all highly regulated areas of activity in which philanthropy can be important.[116] Similar challenges and rapid changes are being experienced by many organisations. Thus, this section evaluates the existing cy-près and administrative scheme regimes with reference to the broader range of charitable causes supported by charitable trusts. We draw on the case survey to help illustrate that evaluation.

Under the existing regime, the state Attorneys-General have a significant role as the protectors of charities and guardians of the public interest in the administration of charitable trusts.[117] In general, it is the Attorney-General, as the representative of the public, who has standing to enforce the terms of a charitable gift.[118] This role also necessitates the involvement of the Attorney-General as a party in court scheme proceedings,[119] such that the Attorney-General plays a key role in representing the public interest. In addition, statutes in a number of states provide that if the value of the trust property is less than a certain amount — $500,000 in New South Wales; $500,000 in Victoria; $300,000 in South Australia; $300,000 (real property)/$150,000 (personal property) in Tasmania; $100,000 in Western Australia — scheme applications go directly to the Attorney-General.[120] Even for

114 Australian Universities Accord Panel, *Australian Universities Accord* (Final Report, December 2023), 63–4, 276–83.

115 Ibid 58–4.

116 See, eg, Murray, 'How do we Regulate Activities' (n 113) 72–3.

117 *Wallis v Solicitor-General for New Zealand* [1903] AC 173, 181–2 (Lord Macnaghten).

118 See: *National Anti-Vivisection Society v Inland Revenue Commissioners* [1948] AC 31 (Lord Simonds); *Num-Hoi, Pon-Yu, Soon-Duc Society Inc v Num Pon Soon Inc* (2001) 4 VR 527 (Harper J).

119 See, eg: Dal Pont (n 12) 340–2 [14.8]–[14.9], 352–3 [14.25]; *Davies* (1940) 58 WN (NSW) 36, 36 (Roper J). In some jurisdictions, additional functions are formally provided for the Attorney-General, such as reviewing the initial form of a proposed scheme before an application can be made to the court: *Charitable Trusts Act 2022* (WA) s 13(1); or authorising the bringing of proceedings as charitable trust proceedings: *Charitable Trusts Act 1993* (NSW) s 6(1)(a) and see also *Willoughby City Council v A-G (NSW)* [2016] NSWSC 972, [5] (Hallen J).

120 *Charitable Trusts Act 1993* (NSW) ss 12, 14; *Charitable Trusts Act 2022* (WA) s 16 (income less than $20,000 is an alternative basis); *Trustee Act 1936* (SA) s 69B(3)(b); *Variation of Trusts Act 1994* (Tas) s 7; *Charities Act 1978* (Vic) s 4. Queensland has released exposure draft legislation that would introduce a similar power for trust property up to $750,000: Draft Trusts Bill 2024 (Qld) s 207.

internal cy-près mechanisms such as that for the University of Sydney, the statute requires that the 'the [University] Senate may request the Minister [for Education] to effect a variation of the terms of the trust … *with the concurrence of the Attorney General*'.[121]

In the United States, questions have arisen as to the suitability of the Attorney-General as an adequate advocate for both charities and donors.[122] This is because the Attorney-General does not have a strong institutional interest in the enforcement of the gift restriction (in the case of the donor) or in an alternative use (in the case of the charity).[123] In Australia, in some states the Attorney-General may not be receptive to these applications, which may further add to the costly and possible lengthy nature of scheme applications. Adding to this risk in a higher education context, is the fact that the Attorney-General may not have a good sense of the nature of the regulatory environment within which higher education providers operate, nor of the socio-economic changes affecting providers. This may be due to a lack of resourcing capacity to spend time learning about the regulatory environment, much of which exists at the federal level, not at a state or territory level. Equally troubling is the potential for an Attorney-General to take a politicised view of their role, and to seek to co-opt charitable resources to support government education policy.[124] However, the case survey found that Attorneys-General are generally neutral in that they do not oppose scheme applications, indicating that these concerns may be overstated.

Under the existing regime, the courts also have a significant role. However, the case survey demonstrates that, in the vast majority of cases, schemes were granted where the applicant established there had been institutional changes, changes to education and training models, insufficient or excessive funds, charity recipients ceasing to exist, or the potential for administrative or governance efficiencies. Given many of these are matters that courts are not well-placed to know more about than higher education providers or other applicants, even with the permissive approach taken by the courts, it remains questionable whether the existing regime best promotes an efficient and effective use of charitable resources. This is also

121 *University of Sydney Act 1989* (NSW) s 25 (emphasis added).

122 See, eg: in the United States, Marion Fremont-Smith, 'Donors Rule' (2007) *Trusts and Estates* 10–12; Reid Kress Weisbord, 'Reservations about Donor Standing: Should the Law Allow Donors to Reserve the Right to Enforce a Gift Restriction?' (2007) 42(2) *Real Property, Probate and Trust Journal* 245, 245–7.

123 Ibid.

124 As to the general risk of co-optation by an Attorney-General see, Marilyn Warren, 'Celebrity Fundraising, Human Generosity and Consumer Protection', *Charity Law Association of Australia and New Zealand* (Document, 5 July 2021) <https://www.claanz.org.au/pdf/Celebrity%20Fundraising%20-%20CLAANZ%20-%205%20July,%202021.pdf>. In a United States context see, eg: Evelyn Brody, 'Whose Public? Parochialism and Paternalism in State Charity Law Enforcement' (2004) 79(4) *Indiana Law Journal* 937; Jonathan Klick and Robert H Sitkoff, 'Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hershey's Kiss-Off' (2008) 108(4) *Columbia Law Review* 749.

because the process of making a scheme application is lengthy,[125] and uses a significant amount of charitable dollars, as the parties' costs are typically paid out of the assets of the charitable trust itself. The plaintiff as trustee may invoke its entitlement to indemnity costs, in the exercise of its rights of exoneration of recoupment out of trusts, while the Attorney-General's presence in the proceedings is required as the protector of charities.[126] As a result, charitable dollars are wasted on the process, even if the final outcome is successful.

This was highlighted in *MacKenzie*, as discussed above. However, the case survey also demonstrates that around half the cases involved trust funds with a similar value to that in *MacKenzie*. Indeed, even when applying a more restrictive criterion, costs look large in comparison to the quantum of trust assets. Private ancillary funds, being charitable trusts that qualify for certain donation tax concessions, are required to distribute 5% of the market value of the trust fund each year.[127] To some extent, this can be seen as a reflection of industry practice for grant-making charitable trusts.[128] Arguably, if costs amount to more than half of this expected distribution to the public good (i.e. $30,000 will be more than 2.5% of a fund's value for funds with assets of less than $1.2 million), then the variation costs are material. Returning to our 21 cases, five concerned trust funds valued at less than $1.2 million in 2023 dollars.[129] One further case involved three trusts, one of which was valued at less than $1.2 million, with one of the other two unstated and one larger than $1.2 million.[130] One further case did not state the value of the trust fund or provide information suggesting that the value was above $1.2 million.[131]

Moreover, the cy-près and administrative scheme provisions are used only infrequently and are not well understood by many lawyers, giving rise to significant difficulties and costs.[132] Indeed, six of the 21 cases surveyed demonstrate potential difficulties of understanding, even once a variation application has been provided to an Attorney-General, and their feedback received before the matter is heard in court. As discussed earlier, in three cases a cy-près scheme was requested, but the court considered that an administrative scheme was actually the appropriate type of

125 See, eg, *Robinson* (n 23) [5] where Kunc J noted that 'the present application is the product of discussions between the interested parties, including the Crown Solicitor on behalf of the Attorney General, over a period of several years'.

126 See *University of New South Wales* (n 20) [69].

127 *Taxation Administration (Private Ancillary Fund) Guidelines 2019* (Cth) r 15(1).

128 See, eg, Murray, *Charity Law and Accumulation* (n 7) 215–16.

129 *King* (n 51); *Connery* (n 43); *Kerin* (n 38); *Price* (n 52); *University of Adelaide* (n 1).

130 *University of Adelaide v A-G* (2018) (n 3).

131 *Levett* (n 45).

132 See, eg, *Taylor* (n 16) [53]. For commentary beyond Australia, see: Mulheron (n 13) 139–41; Kerry O'Halloran, *Charity Law and Social Inclusion: An International Study* (Routledge, 2007) 46–9; Melanie B Leslie, 'Time to Sever the Dead Hand: Fisk University and the Cost of the Cy Près Doctrine' (2012) 31(1) *Cardozo Arts and Entertainment Law Journal* 1, 10–12.

scheme instead because there was no change in purpose, or in conjunction with it.[133] In a further case, an administrative scheme was requested, but some matters were considered to constitute a change of purpose and so could not be included in the administrative scheme.[134] In the other two cases, as discussed above, the judgment itself did not clearly explain why the purpose had changed so as to justify a cy-près scheme.[135]

The result is a regime that is onerous, costly, and lacking regulatory cohesion. This seems particularly unwarranted given our survey findings that most of the higher education applications brought before the courts are non-controversial, with the schemes overwhelmingly allowed, and the courts adopting a pragmatic approach to ensure the most expedient and efficient use of charitable assets. In this process, donor intent appears to play a much larger role in shaping the form of the scheme that is ultimately approved, rather than the question of whether a scheme will be granted in the first place. On the issue of whether a scheme should be granted, the onerous regime does not seem to provide material protection for donor intent, other than screening out applicants on the basis of cost. As a consequence, some smaller charities are choosing to by-pass this regime altogether and instead are making informal arrangements with donors or donors' heirs to informally 'amend' the terms of a trust, when it is no longer expedient to carry out the charitable purposes, or to do so in the manner originally intended.[136] For universities, which are subject to public accountability and scrutiny, employing such workarounds would be risky and exposes universities as trustees to a claim for breach of trust. This raises the question of whether there are alternatives to the existing regulatory framework.

V Alternatives to the Existing Regime

Unlike Australia where the settlement of cy-près and administrative schemes remains within the jurisdiction of the courts, the Charity Commission for England and Wales is empowered through legislation to make cy-près schemes.[137] Further, the trustees of charitable trusts are permitted to amend the trust purposes by way of a 75 percent special majority vote of trustees (or, if there are members with voting powers, then a majority of trustees and 75 percent of those members).[138] The only ground required is that the trustees in good faith consider the change to be

133 *Robinson* (n 23); *University of Adelaide* (n 1); *Kerin* (n 38).

134 *Corish* (n 29).

135 *Price* (n 52); *Greer* (n 52).

136 This is the inevitable conclusion from research into the Western Australian charity sector, see Ian Murray et al 'Restricted Philanthropic Gifts: Paradigm Clash between Law and Practice or Simply a Muddle?' (2024) 47(1) *UNSW Law Journal* 139; *Building Resilience* (n 67).

137 *Charities Act 2011* (UK) s 69.

138 Ibid s 280A.

'expedient in the interests of the charity';[139] and the change must not render the trust non-charitable.[140] The change must be approved by the Charity Commission, which is required to have regard to several factors, including similarity requirements.[141] The result in England and Wales is that 'most cy-près schemes are made by the Charity Commissioners'[142] and that, it has become 'relatively easy for trustees to achieve modification.'[143]

This contrasts with the position in Australia. Western Australia has recently revised,[144] and at the time of writing Queensland is currently revising,[145] statutory provisions dealing with cy-près and administrative schemes for charitable trusts. However, these revisions do not contain any substantive broadening of the grounds on which cy-près schemes are available.[146] Yet widening the statutory cy-près grounds in Australia to enable variation, where trustees can establish that changed social and economic circumstances would result in assets being used more expediently would, based on our survey, essentially be making explicit the current judicial approach to these schemes. That is, courts are very ready to find grounds for a scheme. However, the continued application of a similarity requirement (for the proposed new scheme) under this approach also provides some protection of donor intent. That accords, to some extent, with the continued use of similarity requirements in the case survey by the courts in settling the final terms of a scheme. As noted in Part III, in five cases, the terms of a scheme were adjusted to better accord with the original intention and in a further two cases the trustee or Attorney-General was asked to prepare a detailed scheme for review by the court, once the grounds had been established.

Given that Australia also has a national charity regulator, it merits considering whether reforms to the regulatory regime involving the Australian Charities

---

139 For discussion of the requirement and the purported 'technical issues' background to the reforms: see John Picton, 'The Charities Act 2022 and its Dissuasive Effects on Donors' (2023) 86(4) *Modern Law Review* 1011.

140 *Charities Act 2011* (UK) s 280A (3).

141 Charity Commission consent will require regard to factors including the desirability of securing that the new purposes are 'so far as reasonably practicable, similar to the purposes being altered'; as well as 'the purposes of the charity when it was established' and 'the need for the charity to have purposes which are suitable and effective in the light of current social and economic circumstances': *Charities Act 2011* (UK) s 280A(10).

142 Mulheron (n 13) 92.

143 Brett Crumley and John Picton,'"Still Standing?": Charitable Service-users and Cy-pres in the First-tier Tribunal (Charity)' (2018) 82(3) *Conveyancer and Property Lawyer* 262, 262. These comments were made even before the most recent round of liberalising amendments that commenced in March 2024.

144 *Charitable Trusts Act 2022* (WA).

145 Yvette D'Ath, Department of the Premier and Cabinet, 'Modernised Trusts Bill introduced to Parliament' (Media Statement, 21 May 2024).

146 See, eg, Ian Murray, 'Charitable Trusts Bill 2022 (WA) — A Critique' (2022) 33(3) *Public Law Review* 195.

and Not-for-profits Commission ('ACNC') would be possible here. The English experience suggests there is an argument for enabling the ACNC to have concurrent jurisdiction with the courts. This would reduce the role of state Attorneys-General in scheme applications. The issue in Australia is that the Commonwealth has no general head of power relating to charities or to trusts. The current ACNC regime is (somewhat controversially) largely based on powers relating to corporations, tax and the territories.[147] Indeed, a number of the ACNC regime provisions (primarily compliance sanctions) are expressly limited to 'federally regulated entities', a term that is defined by reference to entities or arrangements to which the Commonwealth corporations or territories powers apply.[148] However, the application of these provisions to trusts has been questioned.[149] Outside the territories, regulating the internal amendment processes for trusts raises a significant risk of extending beyond existing heads of power.[150] While existing referrals of power by the states in relation to corporations and to consumer law could potentially serve as models for referring power in relation to charitable trusts,[151] this issue presents a significant political hurdle that would need to be overcome.

If this hurdle proves insurmountable, a compromise could involve state Attorney-General approval of changes made by trustees. Given that state Attorneys-General are already consulted on scheme applications prior to court proceedings being initiated, and that some Attorneys-General already have the statutory authority to approve cy-près schemes when the trust assets are below a certain threshold,[152] it would not be a great leap to expand this approval process to all charitable trusts in all states.

Permitting trustees to vary charitable trust purposes by way of a 75% special majority vote of trustees, and approval by either the ACNC or the state Attorneys-General would provide a more flexible regulatory regime, reducing both the costs and the timeframe. It would also provide a more expedient use of charitable assets when circumstances change. The ACNC, and to a lesser extent dedicated staff within an Attorney-General's department, arguably have greater familiarity with the charity

147 Along with the communications and external affairs powers: Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012 (Cth) [2.2]–[2.14]. See, eg: Nicholas Aroney and Matthew Turnour, 'Charities are the New Constitutional Law Frontier' (2017) 41(2) *Melbourne University Law Review* 446; Nicholas Aroney, 'Federal Charities Law and the Taxation Power: Three Constitutional Problems' (2023) 51(1) *Federal Law Review* 78.

148 *Australian Charities and Not-for-profits Commission Act 2012* (Cth) ss 80–5, 85–5, 95–10, 100–5, 205–15, 205–20.

149 Ian Murray, 'Regulating Charity in a Federated State: The Australian Perspective' (2018) 9(4) *Nonprofit Policy Forum* 1, 10–11.

150 Aroney (n 147), which argues that the tax power is already stretched to breaking.

151 Patrick McClure, *Strengthening for Purpose: Australian Charities and Not-for-profits Commission Legislation Review* (Final Report, 31 May 2018) 111–14 recommended adopting a national scheme of charity regulation involving some referral of power by the states to the Commonwealth.

152 See above n 120 and accompanying text.

sector and higher education providers within this sector, along with government policy relating to the sector, than the courts. They likely would have a better sense of how charity assets could be used more expediently.[153] Further, if the focus of the ACNC or the Attorney-General is on expediency and similarity requirements of the proposed scheme, it is likely more effective for the regulator to have a specific understanding of these issues rather than a broad overview of the various regulatory settings and socio-economic changes which go to the basis for a scheme. That is, the focus in reviewing a scheme is a narrower one, rather than a broad-based exercise of considering whether a scheme is required at all. In a higher education context, this would mean trusting highly regulated education providers to determine when changed institutional settings, education models or administrative and governance settings mean that it is expedient to alter an educational charitable trust. Regulatory attention would then focus on whether the proposed change logically responds to those changed settings, and is broadly consistent with the original intent.

Concerns may be raised that such a development in Australia would open the floodgates for scheme applications. Further concerns may be raised regarding the risk of donors choosing an alternate device if they feel their charitable assets could be directed to a charitable end they did not specify. However, these concerns can be alleviated via practical solutions. In particular, by maintaining a requirement that any new scheme be as similar as possible to the current purposes, taking into account changed social and economic conditions. Further, the relevant regulators could publish guidelines setting out evidentiary and notification requirements for them to approve a change, as England and Wales have done.[154] Prudent donors could always include a clause in their trust document providing for alternative charitable purposes. Donors making large philanthropic gifts could, as another option, achieve a degree of control through gift agreements governed by contract law.[155]

VI Conclusion

The Australian government has committed to doubling philanthropic giving by 2030 and, at the time of writing, the Productivity Commission is conducting an inquiry into philanthropy to achieve this objective.[156] With significant amounts

153 As to the potential for greater expertise on the part of an administrative body: see Jonathan Garton, 'Justifying the Cy-près Doctrine' (2007) 21(3) *Tolley's Trust Law International* 134, 148–9.

154 See, eg, Charity Commission for England and Wales, 'CC36: Guidance — Changing your Charity's Governing Document' (Web Page, August 2011) <https://www.gov.uk/government/publications/changing-your-charitys-governing-document-cc36> concerning notification of changes for small charitable trusts.

155 See generally Natalie Silver, 'The Contractualisation of Philanthropy' (2022) 38 (2–3) *Journal of Contract Law* 248. To survive the donor, this would require the assignment of contractual rights.

156 See Andrew Leigh, 'Harnessing Generosity, Boosting Philanthropy' (Media Release, 11 February 2023).

of charitable assets being held in perpetual charitable trusts as a result of donor-imposed restrictions that are no longer relevant, as well as a costly judicial process that wastes precious charitable dollars to recover these assets, reform of the current system is needed. This is particularly so for educational charitable trusts, since higher education providers are facing unique funding challenges, along with a suite of major changes.

Our survey of Australian cy-près and administrative scheme cases involving universities and other higher education providers show that following statutory reforms, courts have generally adopted a permissive and pragmatic approach to trust variations, that takes into account considerations beyond adhering to donor intent. Yet, the process of applying for a trust variation remains costly and time consuming. England and Wales provide model possibilities for reform and in doing so demonstrate that in Australia, we do not need to cling to ancient doctrines and processes, but instead can adopt a new regime for trust variations that will serve to increase the resources for the charitable sector, and the wider Australian community.

Appendix: Higher Education Cy-Près and Administrative Scheme Cases and Outcomes

No.	Citation	Type of application	Outcome
1.	*King v A-G (NSW)* [2020] NSWSC 629	Cy-Près scheme relying on extension of grounds under s 9 of the *Charitable Trusts Act 1993* (NSW)	Approved.
2.	*University of Adelaide v A-G (SA)* [2018] SASC 82	Umbrella application for three separate cy-près schemes under s 69B of the *Trustee Act 1936* (SA)	All three cy-près schemes approved. Although not expressly applied for, the court's inherent jurisdiction was also used to settle complementary administrative schemes in respect of two of the charitable trusts — on the grounds of expediency [46].
3.	*Bisset* [2015] QSC 85	Application pursuant to s 105(a)(iii) s105(1)(e)(iii) of the *Trusts Act 1973* (Qld) for cy-près scheme.	Approved (with changes as to the identity of the trustee and other matters such as the precise description of the area of focus of the architecture scholarship).
4.	*The Banyo Seminary Trust* [2000] QSC 215	Application pursuant to s 105(1)(e)(iii) of the *Trusts Act 1973* (Qld) to apply part of the property of the Banyo Seminary Trust cy-près.	Approved.
5.	*Corporation of the Trustees of the Roman Catholic Qld Regional Seminary v A-G (Qld)* [2020] QSC 67	Variation of existing cy-près scheme (in 4 above) by way of application under ss 105(1)(e)(iii) and 106 of the *Trusts Act* (Qld).	Approved.
6.	*Equity Trustees Ltd v A-G (Vic)* [2019] VSC 834	One of two gifts under a will related to higher education. A cy-près scheme was applied for in relation to that gift (under s 2(1)(a)(ii) of the *Charities Act 1978* (Vic) so as to amend a previous cy-près scheme settled in relation to the gift.	Approved.
7.	*Connery v Williams Business College Ltd* [2014] 17 ITELR 251	Judicial advice under s 63 of the *Trustee Act 1925* as to whether cy-près scheme should be ordered.	While trustee had applied for advice, not a cy-près scheme, the court settled a cy-près scheme (in its inherent jurisdiction) as to past conduct and, for the future, ordered that the Attorney-General establish a scheme under s 13(2) of the *Charitable Trusts Act 1993* (NSW).

No.	Citation	Type of application	Outcome
8.	*Tasmanian Perpetual Trustees Ltd v A-G (Tas)* [2017] TASSC 32	Cy-Près variation under ss 5 and 6 of the *Variation of Trusts Act 1994* (Tas) (in particular, the ground of inexpedience in s5(2)).	Refused in part — as to a discriminatory gender condition; and as to resort to capital. Approved in part — as to the period of the scholarship, discretion to refuse funding for a particular university course, and fixing a cap for scholarship payments.
9.	*Levett v A-G (NSW)* [2014] NSWSC 1787	Cy-Près scheme relying on the extension of grounds under s 9 of the *Charitable Trusts Act 1993* (NSW).	Approved.
10.	*Rechtman v A-G (Vic)* [2005] VSC 507	Application for cy-près scheme.	Approved under s2(1)(e)(iii) of the *Charities Act 1978* (Vic)).
11.	*Kerin v A-G (SA)* [2019] SASC 103	Application under s 69B(1)(e) of the *Trustee Act 1936* (SA) for cy-près scheme, seeking four variations. While not expressly requested in this form by the trustee, A-G (SA) submitted that one of the variation requests was actually a request for an administrative scheme in court's inherent jurisdiction.	Refused in large part due to the proposed additional purpose of promoting in rural areas, education in agriculture and related fields, proposed restriction of scholarships to agricultural and related fields of study, and proposed relaxation of equal division of trust income between two purposes. Approved in part — administrative scheme settled under court's inherent jurisdiction (change of wording to avoid ambiguity).
12.	*Chartered Secretaries Australia v A-G (NSW)* [2011] NSWSC 1274	Cy-Près scheme relying on extension of grounds under s 9 of the *Charitable Trusts Act 1993* (NSW).	Approved.
13.	*College of Law Pty Ltd v A-G (NSW)* [2009] NSWSC 1474	Administrative scheme (presumably within the court's inherent jurisdiction at general law).	Approved (with minor variation to better align winding-up clause with the original objects).
14.	*Greer v A-G (NSW)* [2018] NSWSC 725	Cy-Près scheme (no explicit reference to statutory provisions in the judgment).	Approved.
15.	*Price as Executor of the Estate of Beryl Sheila Price v A-G (WA)* [2014] WASC 430	Statutory cy-près scheme under s15(c) of the *Charitable Trusts Act 1962* (WA).	Approved.
16.	*Corish v A-G (NSW)* [2006] NSWSC 1219	Administrative scheme.	Scheme largely approved.

No.	Citation	Type of application	Outcome
17.	*Re Meshakov-Korjakin; State Trustees Ltd v A-G (Vic)* [2011] VSC 372	Application for administrative scheme (by one party only, not the trustee) in court's inherent jurisdiction (and opposed by Attorney-General and trustee). Tentative application for cy-près scheme under s 2 of the *Charities Act 1978* (Vic) in respect of accumulated income (by one party only, not the trustee — and opposed by Attorney-General and trustee) on the basis of alleged breach of perpetuities rules.	Administrative scheme refused. Cy-Près scheme refused because the perpetuities rules did not, at the time of the case, invalidate the accumulation direction.
18.	*University of New South Wales v A-G (NSW)* [2019] NSWSC 178	Cy-Près scheme and administrative scheme under s 9 of the *Charitable Trusts Act 1993* (NSW) (and court's inherent jurisdiction).	Cy-Près and administrative schemes approved.
19.	*Robinson v A-G (NSW)* [2022] NSWSC 996	Cy-Près scheme relying on extension of grounds under s 9 of the *Charitable Trusts Act 1993* (NSW).	Cy-Près scheme refused (no change of purpose requested), but an administrative scheme to achieve the same effect could be approved, with the precise terms to be settled upon a further application.
20.	*Re University of Adelaide v A-G (SA)* [2023] SASC 8	Administrative scheme under court's inherent jurisdiction and cy-près scheme under s 69B of the *Trustee Act 1936* (SA).	Administrative scheme approved. Cy-Près scheme refused (no change of purpose requested).
21.	*University of Adelaide v A-G (SA)* [2023] SASC 17	Cy-Près scheme under s 69B of the *Trustee Act 1936* (SA) and court's inherent jurisdiction.	Approved.