



ANNO TERTIO

GEORGII V REGIS.

A.D. 1912.

No. 1078.

An Act to Consolidate and Amend the Law as to the Investment of Charitable Funds.

[Assented to, November 7th, 1912.]

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

1. This Act may be cited as "The Public Charities Funds Act, 1912." Short title.

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

Public Charities Act,
1875, s. 1.

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

"Commissioners of Charitable Funds" means the Commissioners of Charitable Funds continued in office by or appointed under this Act:

"Commissioners" means the Commissioners of Charitable Funds:

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

The Public Charities Funds Act.—1912.

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

“Public charitable institutions” or “institutions” means and includes public hospitals, destitute asylums, lunatic asylums and hospitals for the mentally defective, orphanages, reformatories, and other institutions of the like nature, whether local or general: Provided that such institutions are established by or pursuant to Act of Parliament, and supported wholly or in part out of the General Revenue of the State.

Repeal.

Saving of effect of repealed Acts.

3. (1) The Acts mentioned in the Schedule are hereby repealed.
- (2) Subject to the provisions of section 26, such repeal shall not—
- (a) Affect the operation prior to the passing of this Act of any of the said Acts; or
 - (b) Alter, except so far (if at all) as may be necessary for giving effect to this Act, the effect of anything done or suffered, or of the omission of anything before the passing of this Act; or
 - (c) Affect any right, duty, or liability acquired, accrued, or incurred under any of the said Acts; or
 - (d) Affect any legal or other proceedings already commenced, or hereafter to be commenced, with respect to any of such matters or things.
- (3) All such matters and things are hereby preserved and continued and declared to be of the same force and effect as if the said Acts were still in force, or as if they were made or done under this Act.

Governor may appoint Commissioners of Charitable Funds.

Public Charities Act, 1875, s. 2.

4. (1) The Governor may from time to time appoint any three persons to be Commissioners of Charitable Funds, and may remove any such Commissioners.

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

No. 7 of 1875.

(3) The Commissioners of Charitable Funds appointed under “The Public Charities Act, 1875,” and in office at the passing of this Act, are hereby continued in office, and shall hereafter hold office as if appointed under this Act until their successors are appointed.

Term of office.

5. (1) Each Commissioner shall, subject to the Governor’s power of removal, be appointed for a term of three years, the Commissioners continued in office by this Act being regarded for this purpose as if appointed on the thirtieth day of June, nineteen hundred and twelve: Provided that on the thirtieth day of June, nineteen hundred and thirteen, one of the Commissioners, to be selected

The Public Charities Funds Act.—1912.

selected by lot, drawn by the Minister, shall retire, and that on the thirtieth day of June in the following year one of the two Commissioners who have been longest in office, to be selected by lot, drawn by the Minister, shall retire. On the thirtieth day of June in each year thereafter the Commissioner who has been longest in office without reappointment shall retire.

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

(3) Any Commissioner shall, on the expiration of his term of office, be eligible for reappointment.

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

6. (1) Each Commissioner shall be entitled to a fee of One Guinea for every meeting of the Commissioners attended by him: Provided that no Commissioner shall be entitled to more than Twenty-six Guineas for meetings attended during any one financial year. Commissioners' remuneration.

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

7. (1) The Commissioners of Charitable Funds, hereby continued in office, and their successors, shall continue to be a body politic and corporate by the name of "The Commissioners of Charitable Funds," and by such name— Commissioners to be a body corporate.
Ibid., s. 3.

(a) Shall continue to have perpetual succession and a common seal;

(b) May sue and be sued; and,

(c) Shall continue to be capable to take, purchase, and hold, and to sell, demise, exchange, and otherwise dispose of, all gifts whatsoever heretofore or hereafter made to any public charitable institution.

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

8. (1) All gifts heretofore made to any charitable institution shall continue to be vested in the Commissioners for the purposes of this Act, and all gifts hereafter made to any such institution shall at once vest in the Commissioners for the said purposes without any conveyance, transfer, assignment, or other assurance whatever. Gifts to charitable institutions vested in Commissioners.
Ibid., s. 4.

(2) Subject

The Public Charities Funds Act.—1912.

(2) Subject as aforesaid, in the event of any gift being made in trust for any institution, it shall be a sufficient compliance with the trusts in that behalf if the executors, trustees, or other persons in whom the immediate property or possession of such gift is vested, pay over, convey, transfer, assign, or otherwise assure the same (as they are hereby required to do) to the Commissioners in their corporate name; and the Commissioners' receipt or release therefor shall be a sufficient discharge to all such executors, trustees, or other persons as aforesaid.

Commissioners to
keep banking account.
Ibid., s. 5.

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

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

Moneys received by
them to be placed
to their account.
Ibid., s. 6.

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

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

Powers of
investment.
Public Charities
Amendment Act,
1886, s. 3 (part).

11. The Commissioners shall invest the said principal moneys, and any interest, dividends, and other profits arising therefrom and remaining in their hands from time to time, either in Government securities, on fixed deposit in any bank, in the bonds of the Corporation of the City of Adelaide, in the purchase of freehold land, or on mortgage of landed property, with full power to vary and transpose any such investment from time to time for others of a like nature, and all investments in such securities already made by the Commissioners are hereby validated.

Power to sell
lands and invest
proceeds.
Ibid., s. 3 (part).

12. (1) The Commissioners shall have power to sell or exchange any of the land in which any moneys are invested under section 11, and also any other land vested in them by virtue of this Act or any Act hereby repealed, or which may come to their hands in consequence of the foreclosure of any mortgage taken by them: Provided that this power shall not be exercised without the consent of the Minister, to be obtained in manner provided by this section.

(2) The

The Public Charities Funds Act.—1912.

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

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

13. It shall also be lawful for the Commissioners to expend, out of any moneys vested in them for the benefit of any institution or institutions, such portions thereof as they think fit in the erection and maintenance of any building or buildings for the purposes of such institution or institutions, on any lands vested in them for the benefit of such institution or institutions or on any Government reserve: Provided that—

Power to expend money in buildings and the maintenance thereof.

Public Charities Amendment Act, 1890, s. 2.

(a) No money shall be so expended in the erection of any building without the consent of the board of management of the institution interested in such money, nor without the approval in writing of the Minister:

(b) No money which has been expressly given for any other special object shall be expended as mentioned in this section.

14. (1) The Commissioners may also lease any such land as mentioned in section 12, or any part thereof, from year to year, or for any term not exceeding twenty-one years in possession from the making of the lease, provided that in every lease there shall be reserved the most improved yearly rent.

Powers of leasing.

Public Charities Act, 1875, s. 8.

(2) Every such lease shall contain such covenants as are customary or usual, according to the nature of the property demised, and also such special covenants as may be required by the Commissioners: Provided that no lease containing any right or covenant to purchase by the lessee shall be granted without the consent of the Minister to be first obtained in manner provided by section 12.

15. Notwithstanding the provisions of subsection (2) of section 10, the Commissioners may, with the consent of the Minister, apply from time to time any interest, dividends, or other profits arising from any property vested in them for the advancement and benefit of the institution or institutions interested in such property.

Commissioners may apply income and interest.

Public Charities Amendment Act, 1886, s. 4.

16. (1) The Commissioners may apply to a Judge of the Supreme Court for advice or direction as to any matter or question, other than

Commissioners may apply for judicial advice.

The Public Charities Funds Act.—1912.

Public Charities Act,
1875, s. 9.

than the propriety of selling or leasing with right of purchase, connected with the management or administration of any property vested in them or received by them by virtue of this Act or any Act hereby repealed, in any manner in which a trustee, executor, or administrator may so apply.

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

Necessary expenses
may be deducted by
Commissioners.

Ibid., s. 10.

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

Officers may be
appointed.

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

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

Commissioners to be
subject to jurisdiction
of the Supreme Court.

Ibid., s. 11 (part).

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

Attorney-General to
take proceedings.

Ibid., s. 11 (part).

20. No proceedings shall be instituted against the Commissioners unless such proceedings have been first sanctioned by the Attorney-General, and all such proceedings shall be taken in his name as promoting the same for and on behalf of the particular institution in respect of which such proceedings are instituted.

Separate accounts to
be kept, and abstract
of accounts to be
prepared.

Ibid., s. 12 and s. 13
(part).

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

22. The

The Public Charities Funds Act.—1912.

22. The accounts of the Commissioners shall, as soon as practicable after the first day of July in every year, be submitted for audit to the Commissioner of Audit, who shall, in respect of such accounts, have all the powers conferred on him by "The Audit Act, 1882," or any Act for the time being in force relating to the audit of public accounts.

Accounts to be audited.
New.
No. 241 of 1882.

23. The abstract of accounts required by section 21 and the report of the Commissioner of Audit on the accounts of the Commissioners shall, as soon as practicable in each year, be published in the *Government Gazette* and be laid before both Houses of Parliament.

Abstracts and auditor's report to be published and placed before Parliament.
Public Charities Act, 1875, s. 13 (part).

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

Report to be made by the Commissioners.

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

Validation of past acts.
No. 376 of 1886.
No. 492 of 1890.
No. 39 of 1876.
No. 7 of 1875.

26. (1) The incorporation under or by virtue of "The Public Charities Act, 1876" of the Commissioners of the Charitable Funds of any public charitable institution and the office and appointment of every such Commissioner are hereby determined, abolished, and cancelled.

Office of Commissioners of particular institutions abolished.

(2) All the powers, duties, and functions of any Commissioners whose incorporation is hereby determined, are hereby transferred to, and shall hereafter be exercised and discharged by, the Commissioners of Charitable Funds.

(3) All gifts to and property of an institution which immediately before the passing of this Act were vested in Commissioners whose incorporation is hereby determined, are hereby and without any assurance other than this Act, vested in the Commissioners of Charitable Funds, subject to the provisions of this Act.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

S. J. WAY,

During the absence of and as Deputy for and on behalf of His Excellency the Governor.

Section 3.

THE SCHEDULE.

Act No. 7 of 1875—The Public Charities Act, 1875.

Act No. 39 of 1876—The Public Charities Act, 1876.

Act No. 376 of 1886—The Public Charities Amendment Act, 1886

Act No. 492 of 1890—The Public Charities Further Amendment Act, 1890.