

TASMANIA

KENNERLEY TRUST BILL 2015

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KENNERLEY TRUST BILL 2015

*(Brought in by the Minister for Justice, the Honourable Dr.
Vanessa Goodwin)*

A BILL FOR

An Act to validate certain actions in respect of the Kennerley Trust, to revoke the deed establishing the Kennerley Trust, to make provision for how the trust property is to be dealt with on revocation of the deed, and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Kennerley Trust Act 2015*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act –

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Part 1 – Preliminary

Association means the Kennerley Children's Home Inc (ABN 54083304285);

commencement day means the day on which this Act commences;

Rules of Association means the rules of the Association, as in force from time to time, that are made as required by, and in accordance with, the *Associations Incorporation Act 1964*;

Trust Deed means the Deed of Gift dated 20 March 1876 and registered in the Registry, within the meaning of the *Registration of Deeds Act 1935*, on 16 January 1908 under the number 11/7412;

Trustee means the position of Trustee as established by the Trust Deed;

trust function or power means a function or power in respect of the Trust or the assets or liabilities of the Trust;

Trust Governor means the position of Governor as established by the Trust Deed;

Trusts means the trusts established under the Trust Deed.

PART 2 – VALIDATION

4. Validation of certain actions

A person who, before the commencement day, performed or exercised, or purportedly performed or exercised, a trust function or power is taken –

- (a) to have validly performed or exercised that trust function or power, if the function or power was performed or exercised in good faith in accordance with the Trust Deed or the Rules of Association, as in force at the time the function was performed or the power was exercised; and
- (b) to have held the position required in the Trust Deed, or the Rules of Association, to perform the function or exercise the power while he or she was performing the function or exercising the power.

5. Trust Deed

- (1) No breach of trust is taken to have occurred in respect of the Trust Deed during the period commencing on the day that the Trust Deed initially took effect and ending on the commencement day.
- (2) On the day that the *Kennerley Children's Homes Act 1969* commenced –

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Part 2 – Validation

- (a) that Act is taken to have varied the Trust Deed to the extent necessary to incorporate the provisions, and intention, of that Act; and
- (b) the variation of the Trust Deed by that Act is taken to have remained in effect despite the repeal of that Act under the *Legislation Repeal Act 1998*.

6. No action lies in respect of failure to act

- (1) In this section –

proposed defendant means a person who acted, or purportedly acted, in the position of Trustee or Trust Governor at any point before the commencement day.

- (2) No action lies against a proposed defendant in relation to any loss incurred by a person, if the loss is only incurred by the person as a consequence of the proposed defendant failing to perform or exercise, any function or power specified within the Trust Deed.

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7. Revocation of Trust Deed

On the commencement day, the Trust Deed is revoked.

8. Transfer of assets and liabilities

(1) In this section –

State tax means any of the following imposed by an Act or law of this State:

- (a) a fee;
- (b) a tax or duty;
- (c) a charge;

Trust property means the following property:

- (a) the land situated at 77 Box Hill Road, Claremont in Tasmania, comprised in Volume 71050, Folios 1 and 2 of the Register kept under section 33 of the *Land Titles Act 1980*;
- (b) the land situated at 20-24 Arunta Crescent, Chigwell in Tasmania, comprised in Volume 86621, Folio 1 of the Register kept under section 33 of the *Land Titles Act 1980*;

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- (c) the land situated at 20 Cadbury Road, Claremont in Tasmania, comprised in Volume 86522, Folios 2 and 3 of the Register kept under section 33 of the *Land Titles Act 1980*;
 - (d) the land situated at 99 Allunga Road, Chigwell in Tasmania, as identified by the property identification number 5296787 contained in the Land Information System Tasmania administered by the department responsible for the administration of the *Land Titles Act 1980*;
 - (e) any other property held by, or on behalf of, a Trustee or Trust Governor in his or her capacity as Trustee or Trust Governor;
 - (f) any other property held by, or on behalf of or for the purposes of, the Trust.
- (2) On the commencement day –
- (a) the Trust property vests in the Association for the purposes of the Association; and
 - (b) the liabilities of the Trusts, including liabilities of the Trusts in respect of the Trust property, become the liabilities of the Association.

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- (3) State tax is not payable in respect of any document prepared, or transfer or transaction done, to give effect to subsection (2).

9. Construction of certain documents

- (1) In this section –

document means a document, or part of a document, that was in force immediately before the commencement day.

- (2) Unless the context or the subject matter of a document otherwise requires, on and after the commencement day –
- (a) a reference in a document to the Trust Deed is taken to be a reference to the Rules of Association; and
 - (b) a reference in a document to the Trusts is taken to be a reference to the Association.
- (3) Unless the context or the subject matter of a document otherwise requires, on and after the commencement day a reference in a document to any of the following organisations is taken to be a reference to be a reference to the Association:
- (a) Boys’ Home Industrial School;
 - (b) Kennerley Boys’ Home;
 - (c) Boys’ Home;
 - (d) Boys’ Industrial School;

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- (e) Hobart Boys' Home and Industrial School;
- (f) Kennerley Boys' Industrial School;
- (g) Kennerley Home.

10. Legal proceedings and related matters

On and after the commencement day –

- (a) any legal or other proceedings instituted by or against a person in respect of the performance or exercise, or failure to perform or exercise, a trust function or power that are still pending may be continued by or against the Association; and
- (b) any legal or other proceedings that could have been instituted, before the commencement day, by or against a person in respect of the performance or exercise, or failure to perform or exercise, a trust function or power may be instituted by or against the Association; and
- (c) any judgement or order of a court obtained before the commencement day by or against a person acting as Trustee or Trust Governor, in his or her capacity as Trustee or Trust Governor, and not executed or satisfied before the commencement day may be enforced by or against the Association; and

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- (d) a document relating to any legal or other proceedings that has been served on or by a person acting as Trustee or Trust Governor, in his or her capacity as Trustee or Trust Governor, is taken, where appropriate, to have been served on or by the Association.

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Part 4 – Miscellaneous

PART 4 – MISCELLANEOUS

11. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.