

DRAFT SECOND READING SPEECH

HON. JACQUIE PETRUSMA MP

Kennerley Trust Bill 2015

check Hansard for delivery

Madam Speaker, the *Kennerley Trust Bill 2015* (the Bill) will ensure that the future operation and good works of Kennerley Children's Homes Incorporated (the Association) can continue, and clarify the legal status of Kennerley Children's Homes.

Essentially, the Bill -

1. validates the actions taken by the Kennerley Trust and Kennerley Children's Homes Inc.;
2. frees and discharges any property held on behalf of the Kennerley Trust, being identified as four properties held in the name of Tasmanian Perpetual Trustees Limited, as well as any other assets identified;
3. vests any property of the Kennerley Trust in Kennerley Children's Homes Inc.;
4. removes liability for stamp duty and any other fees in relation to any property transfers;
5. provides indemnity for trustees; and
6. revokes the Kennerley Trust.

Following the passage of this Bill, the Association will have clear powers and legal certainty to carry out its services and operations in contemporary times.

By way of background, the Kennerley Trust was established through a deed of gift dated 20 March 1876 from the Honourable Alfred Kennerley who gave land and premises in Hobart to trustees upon trust to be occupied and used for the purposes of a boys' home (the Trust).

When the deed was created in 1876, a somewhat different social and legal environment existed.

The deed of gift outlined the purposes of the Trust and vested the management of the Trust in seven (7) Governors. The trustees could only use the land for the purposes of a boys' home, and there was specified to be a maximum of 30 residents. The only boys that could be admitted were boys ordered to be sent there in accordance with the provisions of the *Industrial Schools Act 1867*. It precluded juvenile offenders dealt with under the *Training Schools Act 1867*. All boys at the school were required to receive religious instruction and attend church every Sunday.

Over time, the Trust expanded its operations to suit more modern needs and provide more extensive services to the community.

In 1969 the *Kennerley Children's Homes Act* varied the terms of the original Trust so that the operations of the home could be expanded to include girls and the Trust could sell old and dilapidated properties to acquire more modern properties for its charitable purposes. The limitation on 30 children was also removed.

The 1969 Act did not address issues such as the limitation on children referred under the *Industrial Schools Act 1867* nor the requirements in relation to religious education. This is somewhat curious as neither of these requirements was then being observed, and it can only be assumed that there was an assumption that these deed obligations were no longer binding.

The replacement of the old institution by the purchase of houses appropriate to a family environment occurred and the Kennerley Trust role was greatly expanded. Not only did it provide accommodation where care for children could not be provided in a family environment, it also took on the role of providing the services needed to establish foster parents. It also expanded to include care and respite services for children.

On 4 December 1986, Kennerley Children's Homes Incorporated (the Association) commenced operation as an incorporated association in accordance with the *Associations Incorporation Act 1964*.

It appears that the aim of the incorporation was to enable the Trust to operate as an association instead of a charitable trust. At this time, the trustees of the Trust operated under a belief that the Association subsumed the Trust. This is not correct because, by law, an entirely new body, being the Association, was created and the Trust continued to exist.

At this time there was a genuine misunderstanding that the Trust became the Association. As a result of this, since 1986, Trust and Association assets have been mingled which has created confusion and some legal irregularities which are required to be remedied.

It is arguable that some events which occurred over time, such as there no longer being a requirement to attend religious education, have potentially rendered the Trust invalid. There are certain consequences that flow in the event that the Trust becomes invalid, namely property is vested elsewhere.

Given the complexity of the legal arrangements and structure of these entities, there has been an assumption that the Trust either dissolved or that it continued with powers held by the Association.

There is no imputation that any mischief or malfeasance has occurred; rather it is a case of a misunderstanding about the operation of the law and the legal status of the Trust and Association.

This is perfectly understandable given that the Trust was created in 1867 and archaic deed provisions were used at the time. It was further compounded by the limitations of the 1969 legislation and the subsequent 1986 incorporation of the Kennerley Children's Homes.

The Government, after investigation of the legal instruments and activities of the Trust and Association, is satisfied that no impropriety has occurred, other than a mistaken and misguided belief that the Trust ceased to exist and became the Association.

I therefore bring before the House today the *Kennerley Trust Bill 2015* to clarify the situation.

The Bill revokes the Kennerley Trust of 1876 and vests the assets of the Trust in Kennerley Children's Homes Incorporated. There will be no impact on the operation of the Association nor any other individuals or organisations.

Board Members of the Association have worked with the Department to provide input into the Bill and are fully aware of the course of action that is being taken, and supportive of it.

I wish to take this opportunity to acknowledge the wonderful work that Kennerley Children's Homes currently does in a number of areas including providing high quality foster care, leaving care and emergency respite care to children in our community.

The passage of this Bill will ensure that the Association can continue to provide these excellent services into the future.