

**Version No. 021**  
**Charities Act 1978**  
**Act No. 9227/1978**

Version incorporating amendments as at 22 November 2000

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**Version No. 021**

**Charities Act 1978**

**Act No. 9227/1978**

Version incorporating amendments as at 22 November 2000

An Act to amend the Law relating to Charities and for other purposes.

**BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):**

**1. Short title and commencement**

- (1) This Act may be cited as the **Charities Act 1978**.
- (2) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the Government Gazette.

**1A. Division**

This Act is divided into Parts as follows:

Part I—The Application of the Cy Prés Doctrine to Charities

Part II—Supervision of Charities

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S. 1A  
inserted by  
No. 9710 s. 2.

**PART I—THE APPLICATION OF THE CY PRÉS DOCTRINE  
TO CHARITIES**

**2. Occasions for applying property cy près**

- (1) Subject to sub-section (2), the circumstances in which the original purposes of a charitable gift can be altered to allow the property given or part of it to be applied cy près shall be as follows—
  - (a) where the original purposes, in whole or in part—
    - (i) have been as far as may be fulfilled; or
    - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift; or
  - (b) where the original purposes provide a use for part only of the property available by virtue of the gift; or
  - (c) where the property available by virtue of the gift and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably, regard being had to the spirit of the gift, be made applicable to common purposes; or
  - (d) where the original purposes were laid down by reference to an area which then was but has since ceased to be a unit for some other purpose, or by reference to a class of persons or to an area which has for any reason since ceased to be suitable, regard being had to the spirit of the gift, or to be practical in administering the gift; or

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- (e) where the original purposes, in whole or in part, have, since they were laid down—
- (i) been adequately provided for by other means; or
  - (ii) ceased, as being useless or harmful to the community or for other reasons, to be in law charitable; or
  - (iii) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift, regard being had to the spirit of the gift.
- (2) Sub-section (1) shall not affect the conditions which must be satisfied in order that property given for charitable purposes may be applied cy près, except in so far as those conditions require a failure of the original purposes.
- (3) References in this section to the original purposes of a gift shall be construed, where the application of the property given has been altered or regulated by a scheme, by or under an Act or otherwise, as referring to the purposes for which the property is for the time being applicable.
- (4) It is hereby declared that a trust for charitable purposes places a trustee under a duty, where the case permits and requires the property or some part of it to be applied cy près, to secure its effective use for charity by taking steps to enable it to be so applied.
- (5) This section applies to an alteration or regulation by or under an Act of the original purposes of a gift made before, on or after the commencement of section 15(1) of the **Health Services (Further Amendment) Act 1998**.

S. 2(3)  
amended by  
No. 66/1998  
s. 15(1).

S. 2(5)  
inserted by  
No. 66/1998  
s. 15(2).

**3. Application cy près of gifts of donors unknown or disclaiming**

- (1) Property given for specific charitable purposes which fail shall be applicable cy près as if given with a general charitable intention, where it has been given—
  - (a) by a donor who, after such advertisements and inquiries as are reasonable, cannot be identified or cannot be found; or
  - (b) by a donor who has executed a written disclaimer of his right to have the property returned.
- (2) For the purposes of this section property shall be conclusively presumed (without any advertisement or inquiry) to have been given by donors who cannot be identified, in so far as it consists—
  - (a) of the proceeds of cash collections made by means of collecting boxes or by other means not adapted for distinguishing one gift from another; or
  - (b) of the proceeds of any lottery, competition, entertainment, sale or similar money-raising activity, after allowing for property given to provide prizes or articles for sale or otherwise to enable the activity to be undertaken.
- (3) The court may by order direct that property not falling within sub-section (2) shall for the purposes of this section be treated (without any advertisement or inquiry) as having been given by donors who cannot be identified, where it appears to the court either—

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- (a) that it would be unreasonable, having regard to the amounts likely to be returned to the donors, to incur expense with a view to returning the property; or
- (b) that it would be unreasonable, having regard to the nature, circumstances and amount of the gifts, and to the lapse of time since the gifts were made, for the donors to expect the property to be returned.
- (4) Where property is applied cy près by virtue of this section, the donor shall be deemed to have parted with all his interest at the time when the gift was made; but where property is so applied as having been given by donors who cannot be identified or cannot be found, and is not so applied by virtue of sub-section (2) or (3)—
- (a) the scheme shall specify the total amount of that property; and
- (b) the donor of any part of that amount shall be entitled, if he makes a claim not later than twelve months after the date on which the scheme is made, to recover from the charity for which the property is applied a sum equal to that part, less any expenses properly incurred by the charity trustees after that date in connexion with claims relating to his gift; and
- (c) the scheme may include directions as to the provision to be made for meeting any such claim.
- (5) For the purposes of this section, charitable purposes shall be deemed to "fail" where any difficulty in applying property to those purposes makes that property or the part not applicable cy près available to be returned to the donors.
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- (6) In this section, except in so far as the context otherwise requires, references to a donor include persons claiming through or under the original donor, and references to property given include the property for the time being representing the property originally given or property derived from it.
- (7) This section shall apply to property given for charitable purposes, notwithstanding that it was so given before the commencement of this Act.

**4. Power of Attorney-General to sanction schemes**

- (1) The trustees of any property given for charitable purposes where—
- (a) the total value of the corpus of the property is less than \$50 000 or the prescribed amount, whichever is the greater; or
- (b) the total value of the corpus of the property does not exceed \$1000 and the property is given for specific charitable purposes which fail—

may (in lieu of making application to the court) in writing and upon payment of the prescribed fee (if any) apply to the Attorney-General for directions for the application of such property cy près.

- (2) Upon receiving any application the Attorney-General may make such investigations and inquiries as he thinks fit and may require the trustees to furnish such information, opinions or advice as he thinks fit.

S. 4(1)  
amended by  
No. 16/1986  
s. 31(a).

S. 4(1)(a)  
substituted by  
No. 16/1986  
s. 31(b).

S. 4(1)(b)  
substituted by  
No. 16/1986  
s. 31(b).

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(3) Where the Attorney-General is satisfied either—

(a) that—

- (i) the property was given for charitable purposes and may pursuant to section 2 or 3 be applied cy près; and
- (ii) the total value of the corpus of the property is less than \$50 000 or the prescribed amount, whichever is the greater; or

**S. 4(3)(a)**  
**substituted by**  
**No. 16/1986**  
**s. 31(c).**

(b) that—

- (i) such property was given for specific charitable purposes which fail; and
- (ii) the total value of the corpus of the property does not exceed \$1000; and

**S. 4(3)(b)(ii)**  
**substituted by**  
**No. 16/1986**  
**s. 31(d).**

(iii) unless the Attorney-General considers it would be unreasonable to require the applicant to incur expense with a view to identifying or locating the person or persons who would be entitled to the property but for the operation of this section, the consent of the person or persons so entitled has been obtained—

he may in his absolute discretion and subject to such provisions and conditions (if any) as he thinks fit—

- (c) sanction any scheme proposed by the trustees for the application cy près of such property; and
- (d) authorize the sale transfer conversion or vesting of any such property by the trustees notwithstanding that the trustees have no such power pursuant to the trust instrument.



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- (4) The Attorney-General shall not by virtue of this section—
- (a) have any greater powers than are exercisable by the court in charity proceedings; or
  - (b) have power to try or determine—
    - (i) the title at law or in equity to any property as between a charity or trustee for a charity and a person holding or claiming the property or an interest in it adversely to the charity;
    - (ii) any question as to the existence or extent of any charge or trust;
    - (iii) any dispute as to whether the trustees are trustees of a charitable trust; or
    - (iv) any dispute as to whether the property may be applied cy près pursuant to section 2 or 3.
- (5) In any case where the Attorney-General in accordance with sub-section (2) sanctions any scheme or gives any authority the trustees shall not thereafter be subject to any liability for breach of trust arising solely from their application of property cy près in accordance with such scheme or authority.

**5. Power of Attorney-General to give opinions etc.**

- (1) The trustees of property given for charitable purposes, the total value of which is the corpus of which is less than \$50 000 or the prescribed amount, whichever is the greater may, in writing and upon payment of the prescribed fee (if any), apply to the Attorney-General for the opinion or advice of the Attorney-General on any matter affecting the performance of the duties of the trustees as such.

S. 5(1)  
amended by  
No. 16/1986  
s. 31(e).

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- (2) Upon receiving any application the Attorney-General may make such investigations and inquiries as he thinks fit and may require the trustees to furnish such information, opinions or advice as he thinks fit.
  - (3) A trustee acting in accordance with the opinion or advice of the Attorney-General given under this section with respect to the charity shall be deemed as regards his responsibility for so acting, to have acted in accordance with his trust, unless, when he does so, either—
    - (a) he knows or has reasonable cause to suspect that the opinion or advice was given in ignorance of material facts; or
    - (b) the decision of the court has been obtained on the matter or proceedings are pending to obtain a decision.

**6. Payment by trustees to charitable institutions**

- (1) Subject to any express provision to the contrary in the trust instrument, the receipt in writing of the treasurer or other proper officer for the time being of any charitable institution association or other body shall be a sufficient discharge for any payment of money or transfer of property thereto pursuant to a trust instrument and trustees making any such payment or transfer shall not be concerned to inquire as to the application of any money paid or property transferred.
- (2) The provisions of sub-section (1) shall not apply to any trust instrument executed before the commencement of this section.

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**7. Regulations**

The Governor in Council may make regulations for or with respect to—

- (a) prescribing forms for applications made under this Act;
- (b) prescribing fees for applications made under this Act;
- (c) generally, all such matters and things as are authorized or permitted to be prescribed or are necessary or expedient to be prescribed for carrying this Act into effect.

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**PART II—SUPERVISION OF CHARITIES**

Pt 2 (Heading and ss 8–17) inserted by No. 9710 s. 3.

**8. Definitions**

S. 8 inserted by No. 9710 s. 3.

In this Part unless inconsistent with the context or subject-matter—

**"charitable estate"** means an estate of a deceased person where, when the administration of the estate is complete—

- (a) a charity will be entitled to participate in the distribution of the assets of the estate; or
- (b) the whole or any part of the estate is to be used for the establishment of a charity;

**"charity"** means any institution which is established for purposes which according to the law of Victoria are charitable;

**"document"** has the same meaning as in the **Evidence Act 1958**;

**"executor"** includes an administrator of the estate of a deceased person;

**"institution"** means any trust or other undertaking whether corporate or unincorporate.

**9. Method of conducting inquiry**

S. 9 inserted by No. 9710 s. 3.

(1) The Attorney-General may—

- (a) of his own motion; or
- (b) upon the application of another person—

appoint an inspector to inquire (in the manner specified in the inspector's terms of appointment) into the administration or management of any

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charity or charitable estate or the value, condition, management or application of the property or income belonging to that charity or charitable estate or to which that charity or charitable estate is or will become entitled.

- (2) Where an application is made under paragraph (b) of sub-section (1) the applicant shall—
  - (a) furnish such information in connexion with the application as the Attorney-General requires to enable him to determine whether there are reasonable grounds for making the inquiry; and
  - (b) where the Attorney-General so requires give security of such amount and in such manner as he determines for payment of the expenses of and incidental to the inquiry.

**10. Powers of inspector**

- (1) The inspector, for the purposes of conducting an inquiry under section 9, shall have and may exercise in respect of the summoning and examining of persons and the production of documents the same powers as are by the **Evidence Act 1958** conferred on a board appointed by the Governor in Council and the provisions of sections 14 to 16 of the **Evidence Act 1958** with such adaptations as are necessary shall apply accordingly.
- (2) Where any documents are produced under sub-section (1) the inspector may take possession of those documents for the period he considers necessary for the purposes of the inquiry.

S. 10  
inserted by  
No. 9710 s. 3.

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- (3) A person examined under sub-section (1) shall not be excused from answering a question put to him by the inspector on the ground that the answer might tend to incriminate him but, where that person claims before answering that question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under this section or in relation to a charge of perjury in respect of the answer.
- (4) An inspector may permit a document which is in his possession to be inspected at all reasonable times by any person who would be entitled to inspect that document if it were not in his possession.

S. 10(3)  
 amended by  
 No. 74/2000  
 s. 3(Sch. 1  
 item 17).

**11. Record of examination**

- (1) An inspector may cause an examination made by him under section 10 to be recorded in writing or by means of shorthand, a stenotype machine or recording apparatus.
- (2) Where an examination has been recorded other than in writing the inspector shall cause the record of that examination to be transcribed into writing.
- (3) The inspector shall cause the record of the examination to be read to or by the person examined and he may request that person to sign that record.
- (4) Where a person does not comply with a request to sign under sub-section (3) the inspector may certify that the record of the examination is correct.

S. 11  
 inserted by  
 No. 9710 s. 3.

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- (5) The record of an examination which has been either signed by the person examined or certified by the inspector to be correct may, subject to this section, be used in evidence in any legal proceedings against that person.
- (6) A copy of the record signed by a person shall be furnished without charge to that person upon request made by him in writing.
- (7) Any part of a record of an examination made under this section that relates to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings other than in proceedings under section 10 or in relation to a charge of perjury in respect of that answer.
- (8) Nothing in this section affects or limits the admissibility of other written or oral evidence.
- (9) Where a report is made under section 12 a record of an examination made under this section relating to that report shall be furnished with the report.

S. 12  
inserted by  
No. 9710 s. 3.

**12. Report**

- (1) Where an inspector has completed an inquiry he shall prepare a report which shall be forwarded to the Attorney-General.
- (2) An inspector may at any time during the progress of the investigation and shall if so directed by the Attorney-General make an interim report to the Attorney-General.
- (3) An inspector may when making a report under this section, give to the Attorney-General any documents which he has taken possession of under sub-section (2) of section 10 and the Attorney-General—

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- (a) may retain the documents for such period as he considers to be necessary to enable a decision to be made as to whether or not any legal proceedings ought to be instituted in relation to the charity or charitable estate;
  - (b) may retain the documents for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
  - (c) may permit other persons to inspect the documents while they are in his possession;
  - (d) may permit the use of the documents for the purposes of any legal proceedings;
  - (e) shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Attorney-General to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.
- (4) The Attorney-General may where he thinks fit forward any report made under this section—
- (a) to the charity or to the executor of any charitable estate to which the report relates; and
  - (b) to any other person having an interest in the outcome of the inquiry where that person has requested that the report be forwarded to him.
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S. 13  
inserted by  
No. 9710 s. 3.

**13. Court may order removal of trustee or executor**

In addition to any other powers which the court has with respect to charities or charitable estates the court may where an inspector has reported that a trustee of a charity or the executor of a charitable estate should be removed from his position as trustee or executor order the removal of the trustee or executor.

S. 14  
inserted by  
No. 9710 s. 3.

**14. Power to delegate**

- (1) An inspector may by instrument in writing delegate all or any of his powers or functions under this Part other than—
  - (a) the power to administer oaths; or
  - (b) the power to examine on oath.
- (2) The inspector may by instrument in writing vary or revoke a delegation made by him.
- (3) A power or function delegated by an inspector shall be exercised or performed in accordance with the instrument of delegation.
- (4) The delegation of a power or function by the inspector does not prevent the exercise of that power or the performance of that function by the inspector.
- (5) A delegate shall, on the request of a trustee of a charity or the executor of a charitable estate, the affairs of which are being inquired into under this Part, produce the instrument of delegation for inspection.

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- (6) Where two or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate the affairs of a charity or charitable estate, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

**15. Costs**

S. 15  
inserted by  
No. 9710 s. 3.

- (1) Where an inquiry has been carried out under this Part the Attorney-General may determine the costs of conducting that inquiry (including any expenses incurred and payable by the Attorney-General in any proceedings brought by him) and may—
- (a) apply to the court for an order that those costs or any part of them be paid by any trustee of the charity or any executor of the charitable estate which was the subject of the inquiry;
  - (b) direct that the costs or any part of them should be paid from the funds of the charity or charitable estate which was the subject of the inquiry; or
  - (c) direct that, in the case of a person who has given security for costs under section 9(2)(b), the costs or any part of them be paid by that person.
- (2) Where an application has been made under subsection (1)(a) the court may—
- (a) make an order in the terms sought by the Attorney-General; or
  - (b) where it considers it just and equitable to do so vary the order as it sees fit.

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S. 16  
inserted by  
No. 9710 s. 3.

Victorian Legislation and Parliamentary Documents

S. 16(3)  
amended by  
No. 57/1989  
s. 3(Sch.  
item 21).

S. 17  
inserted by  
No. 9710 s. 3.

S. 17(1)  
amended by  
No. 9902  
s. 2(1)(Sch.  
item 10).

## 16. Offence

- (1) A person who—
  - (a) conceals, destroys, mutilates or alters any of the documents which have been or may be required to be produced under this Part; or
  - (b) sends, causes to be sent or conspires with another person to send out of the State any of those documents—shall be guilty of an offence.
- (2) An offence against sub-section (1) is an indictable offence the penalty in respect of which is a term of imprisonment for a period not exceeding five years.
- (3) Notwithstanding that an offence against sub-section (1) is an indictable offence, the Magistrates' Court may hear and determine proceedings for an offence against sub-section (1) if the court is satisfied that it is proper to do so and where the court convicts a person of an offence against sub-section (1) that person shall be liable to a penalty of a term of imprisonment for a period not exceeding two years.
- (4) In a prosecution for an offence under sub-section (1) it is a defence if the person charged with the offence proves that he did not act with intent to defeat the purposes of this Part or to delay or obstruct the carrying out of an inquiry under this Part.

## 17. Exemption from Part

- (1) The Attorney-General may only appoint an inspector to inquire into—
  - (a) a registered benevolent society;
  - (b) an incorporated institution; or

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(c) a scheduled hospital—

within the meaning of the **Hospitals and Charities Act 1958** where he has first obtained the consent of the Minister of Health.

- (2) Notwithstanding sub-section (1) where the Attorney-General has under section 9 appointed an inspector to inquire into the affairs of a charity (other than a body which is of a type specified in sub-section (1)) the inspector may summon or examine pursuant to section 10 any person who is involved in the management of or employed by a body which is of a type specified in sub-section (1) or require any person who is involved in the management of or employed by a body which is of a type specified in sub-section (1) to produce documents, and for the purposes of summoning or examining that person or requiring those documents to be produced the inspector shall have and may exercise all the powers conferred on him by this Part.

S. 17(2)  
amended by  
No. 9902  
s. 2(1)(Sch.  
item 11).

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Endnotes

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**ENDNOTES**

**1. General Information**

The **Charities Act 1978** was assented to on 19 December 1978 and came into operation as follows:

Sections 2, 3 on 9 May 1979: Government Gazette 9 May 1979 page 1352;  
rest of Act on 1 September 1979: Government Gazette 15 August 1979  
page 2547.

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Endnotes
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## 2. Table of Amendments

This Version incorporates amendments made to the **Charities Act 1978** by Acts and subordinate instruments.

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### **Charities (Amendment) Act 1981, No. 9710**

*Assent Date:* 5.1.82  
*Commencement Date:* 5.1.82  
*Current State:* All of Act in operation

### **Statute Law Revision Act 1983, No. 9902**

*Assent Date:* 15.6.83  
*Commencement Date:* 15.6.83: subject to s. 2(2)  
*Current State:* All of Act in operation

### **Courts Amendment Act 1989, No. 16/1986**

*Assent Date:* 22.4.86  
*Commencement Date:* Ss 1–11, 13–27, 29–34 on 1.7.86: Government Gazette 25.6.86 p. 2180; s. 28 on 1.9.86: Government Gazette 27.8.86 p. 3201; s. 12 on 1.1.88: Government Gazette 7.10.87 p. 2701  
*Current State:* All of Act in operation

### **Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989**

*Assent Date:* 14.6.89  
*Commencement Date:* S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217  
*Current State:* All of Act in operation

### **Health Services (Further Amendment) Act 1998, No. 66/1998**

*Assent Date:* 4.11.98  
*Commencement Date:* S. 15 on 4.11.98: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Charities Act 1978**

### **Statute Law Revision Act 2000, No. 74/2000**

*Assent Date:* 21.11.00  
*Commencement Date:* S. 3(Sch. 1 item 17) on 22.11.00: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Charities Act 1978**

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**Endnotes**

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**3. Explanatory Details**

No entries at date of publication.