

## WALKER TRUSTS ACT.

Act No. 31, 1938.

An Act to enable the trustees of the will and codicil of Thomas Walker, late of "Yaralla," Concord, in the then Colony of New South Wales, deceased, to purchase, and the trustee of the will of Dame Eadith Campbell Walker, late of "Yaralla," Concord, in the State of New South Wales, to sell certain lands at Concord aforesaid, and to vest portion of such lands in His Majesty for the purpose of a convalescent hospital for men to be known as the "Dame Eadith Walker Convalescent Hospital for Men"; to authorise the said first-mentioned trustees to endow the said hospital; to provide for the management and control of the said hospital; to provide for the application of certain funds held by the said trustees on trust for charitable purposes; to validate the acts of the said trustees in and about the control and management of the Thomas Walker Convalescent Hospital; to incorporate the trustees for the time being of the Thomas Walker Convalescent Hospital, and the trustees for the time being of the Yaralla Cottages Trust respectively, and to grant to such corporations all necessary and proper

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proper powers for the performance of those respective charitable trusts; and for purposes connected therewith. [Assented to, 14th December, 1938.]

Preamble.

**W**HEREAS on or about the twenty-sixth day of August one thousand eight hundred and seventy-three Thomas Walker late of "Yaralla" Concord near Sydney in the then Colony of New South Wales Esquire duly made his last will and testament whereby after making certain bequests he devised and bequeathed all his real chattel real and leasehold estates and all the rest and residue of his personal estate as therein mentioned unto certain executors and trustees therein named their heirs executors administrators and assigns upon the trusts therein set forth AND the testator declared that in the event of his daughter Edith Campbell Walker dying without issue (which event has since happened) then as regards the residue of his trust estate his Trustees should divide the same into two portions of as nearly equal value in their judgment as might be practicable and as regards one of those portions should hold the same in trust for certain persons as therein mentioned and as regards the other of those portions should distribute the same amongst charitable (not religious) institutions then or thereafter established in Australia in such proportions and to such institutions as they should determine AND WHEREAS the investments representing the last mentioned portion of the residue of such trust estate are now valued at the sum of three hundred and eighty thousand pounds or thereabouts AND WHEREAS on or about the sixth day of August one thousand eight hundred and eighty-six the said testator by a codicil made to his said will after making certain bequests stated that for a considerable time past he had had it in his mind to establish on part of his land known as "Yaralla" a hospital for the reception and restoration to health of convalescent patients from the hospitals of Sydney or elsewhere and enjoined the trustees of his will and his said daughter to accomplish his design as soon after his decease as it might be practicable to do so and with a view to enabling them to do so he thereby directed  
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his trustees to appropriate and set aside out of his estate not less than one hundred thousand pounds for such purpose AND WHEREAS the said Thomas Walker died on the second day of September one thousand eight hundred and eighty-six and probate of the said will and codicil of the said testator was on or about the twenty-second day of November one thousand eight hundred and eighty-six granted by the Supreme Court of New South Wales to Joanna Walker and James Thomas Walker two of the executors in the said will and codicil named AND WHEREAS the trustees of the will and codicil of the said testator established and have since maintained a hospital known as the Thomas Walker Convalescent Hospital on part of his land at "Yaralla" aforesaid and appropriated a sum of one hundred thousand pounds out of his estate for the building and maintenance of the said hospital AND WHEREAS Alfred Consett Stephen of Sydney aforesaid and Perpetual Trustee Company (Limited) are now the trustees of the will and codicil of the said Thomas Walker deceased AND WHEREAS all the debts of the said Thomas Walker deceased have been paid and all specific and pecuniary legacies bequeathed by him have been satisfied and paid AND WHEREAS on or about the twenty-sixth day of July one thousand nine hundred and thirty-five the abovementioned Eadith Campbell Walker then Dame Eadith Campbell Walker made her last will and appointed the said Perpetual Trustee Company (Limited) to be sole executor and trustee of that her will and the testatrix gave and bequeathed the residue of her real and personal estate whatsoever and where-soever situate (including all property over which she might have a general power of appointment of disposition by will) unto her trustees upon trust as therein mentioned and directed that her trustee should stand possessed of her residuary estate upon the trusts following that is to say (a) as to two equal third parts in trust for certain persons as therein mentioned and (b) as to the remaining one equal third part in trust for The Returned Sailors and Soldiers Imperial League of Australia New South Wales Branch AND WHEREAS the said testatrix died on or about the eighth day of October  
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one thousand nine hundred and thirty-seven without having been married AND WHEREAS probate of the said will of the said testatrix was on or about the twenty-fifth day of November one thousand nine hundred and thirty-seven granted by the Supreme Court of New South Wales to Perpetual Trustee Company (Limited) the executor and trustee named in the said will AND WHEREAS by indenture made the fifth day of February one thousand eight hundred and ninety-seven between the said Eadith Campbell Walker of the first part the said Eadith Campbell Walker and the said James Thomas Walker of Sydney aforesaid of the second part and the said Perpetual Trustee Company (Limited) of the third part it was recited inter alia that the said Eadith Campbell Walker having purchased the land therein referred to had caused the said land to be transferred to and vested in the said company for the purposes and upon the trusts thereafter mentioned AND it was by the said indenture witnessed and declared by and between the parties thereto that the company did hold the securities particularised therein and the money thereby represented and the sum of six thousand pounds therein referred to upon the trusts therein following (all of which trusts are in this Act referred to as "The Yaralla Cottages") AND WHEREAS the said trusts were varied and enlarged by an order of the Supreme Court of New South Wales made on the eleventh day of September one thousand nine hundred and twenty-two on a petition No. 116 of 1922 in the Supreme Court of New South Wales in Equity AND WHEREAS the trustees of the will and codicil of the said Thomas Walker deceased are desirous of establishing on the lands in the first schedule to this Act described a convalescent hospital for men to be called The Dame Eadith Walker Convalescent Hospital for Men AND WHEREAS the residuary beneficiaries under the trusts of the will of the said testatrix have consented to the sale of the lands in the first and second schedules to this Act described, by the said Perpetual Trustee Company (Limited) for the sums of £65,000 and £1,025 respectively to the said trustees of the will and codicil of the said Thomas Walker deceased AND WHEREAS certain difficulties have arisen as to the purchase and acquisition of the lands in  
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the schedules to this Act set forth by the said trustees of the will and codicil of the said Thomas Walker deceased by reason of the said Perpetual Trustee Company (Limited) being one of the trustees thereof as well as being the sole executor and trustee of the will of the said Dame Eadith Campbell Walker deceased AND it is desirable that the trustees of the will and codicil of the said Thomas Walker deceased should be authorised and enabled to purchase the said lands with part of the moneys comprised in the charitable fund hereinafter in this Act defined AND WHEREAS it is desirable that the lands in the first schedule to this Act set forth should be vested in His Majesty for the purpose of The Dame Eadith Walker Convalescent Hospital for Men as in this Act mentioned AND WHEREAS it is desirable to commemorate the long association of the said Thomas Walker deceased with the town and district of Tenterfield: BE it therefore enacted by the King's Most Excellent Majesty and by and with the consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited as the "Walker Trusts Act, 1938." Short title.

2. In construing this Act the following words shall, Definitions. unless the context otherwise requires, have the meanings herein assigned to them:—

"Charitable fund" shall mean that portion of the residuary estate of the said Thomas Walker deceased held by the trustees of the will and codicil of the said Thomas Walker deceased upon trust for distribution amongst charitable (not religious) institutions.

"The trustee of the will and codicil of Thomas Walker deceased" shall mean the trustee or trustees for the time being of the will and codicil of the said Thomas Walker deceased.

"The trustee of the will of Dame Eadith Campbell Walker deceased" shall mean the trustee or trustees for the time being of the will of the said Dame Eadith Campbell Walker deceased.

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“The trustee of the Yaralla Cottages” shall mean the trustee or trustees for the time being of the trusts created by the said recited indenture of the fifth day of February one thousand eight hundred and ninety-seven as varied by the said order and by this Act.

Land in  
First  
Schedule.

3. (1) The trustee of the will and codicil of Thomas Walker deceased shall be deemed to have purchased and the trustee of the will of Dame Eadith Campbell Walker deceased shall be deemed to have sold the land in the First Schedule to this Act described for the sum of sixty-five thousand pounds and the land in the Second Schedule to this Act described for the sum of one thousand and twenty-five pounds.

(2) The trustee of the will of Dame Eadith Campbell Walker deceased upon receiving payment from the trustee of the will and codicil of Thomas Walker deceased of the said purchase money for the land in the Second Schedule to this Act described shall convey to the body corporate by this Act created and named The Thomas Walker Convalescent Hospital the said land for an estate in fee simple and thereupon the said body corporate shall hold the said land as part of The Thomas Walker Convalescent Hospital.

(3) Any assurance of the said land made in pursuance of the preceding subsection of this Act shall be free from the payment of stamp duty under the provisions of the Stamp Duties Act, 1920-1933.

Appropriation of part of the charitable fund.

4. The trustee of the will and codicil of the said Thomas Walker deceased shall upon the commencement of this Act appropriate out of the charitable fund the sum of one hundred thousand pounds and apply the same in manner following that is to say:—

(a) As to sixty-six thousand and twenty-five pounds thereof in payment to the trustee of the will of Dame Eadith Campbell Walker deceased of the purchase moneys of the respective lands in the Schedules to this Act described.

(b) And as to the balance of the said sum of one hundred thousand pounds in payment thereof to the Colonial Treasurer to be placed by him  
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in a separate trust account for the purposes of the constitution and establishment of the Dame Eadith Walker Convalescent Hospital for Men as in this Act set forth.

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5. Upon the commencement of this Act the lands in the First Schedule to this Act described shall without any assurance in the law immediately become divested from the trustee of the will of Dame Eadith Campbell Walker deceased and shall become vested in His Majesty together with all rights easements and privileges thereto appurtenant.

Vesting of land in First Schedule.

6. All the trusts, conditions, covenants, easements, charges and encumbrances to which the said lands so vested in His Majesty are subject immediately before the commencement of this Act are hereby discharged and annulled by the operation of this Act but only in so far as the same affect the said land so vested.

Discharge of trusts affecting land in First Schedule.

7. The Registrar-General shall on all Crown grants, certificates of title and other instruments evidencing title to such of the lands described in the First Schedule to this Act as are under the provisions of the Real Property Act, 1900, make such entries as may be necessary to give effect to this Act.

Entries in the register book.

8. The said lands in the preceding section referred to shall as from the day on which they become vested in His Majesty be deemed to have become and to be Crown lands and to be dedicated for the purposes of the Dame Eadith Walker Convalescent Hospital for Men in accordance with the provisions of section twenty-four of the Crown Lands Consolidation Act, 1913, but it shall not be necessary to lay before the Houses of Parliament any abstract of such dedication.

Dedication of lands in First Schedule.

9. (1) Upon the vesting of the land in the First Schedule to this Act described in His Majesty the Governor shall—

Dame Eadith Walker Convalescent Hospital for Men.

- (a) out of the moneys in paragraph (b) of section four of this Act referred to and out of such moneys as may be appropriated by Parliament for that purpose adapt the buildings now erected upon the land in section five of this Act mentioned and erect such other buildings as the Governor shall think necessary or proper for the

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the purposes of the convalescent hospital for men to be called the Dame Eadith Walker Convalescent Hospital for Men;

- (b) maintain the upkeep of such lands and supply such buildings with such equipment as may be proper and necessary for the purposes of The Dame Eadith Walker Convalescent Hospital for Men.

(2) The Governor may after the constitution and establishment of the Dame Eadith Walker Convalescent Hospital for Men make any order in respect thereof under the provisions of subsection two of section four of the Public Hospitals Act, 1929-1937.

Further appropriation of part of charitable fund.

**10.** The trustee of the will and codicil of Thomas Walker deceased shall upon the commencement of this Act out of the charitable fund appropriate the sum of ten thousand pounds and pay such sum to the Prince Albert Memorial Hospital, Tenterfield, to be applied in the manner following: As to a sum not exceeding five thousand pounds in the construction and equipment of a maternity ward to be known as "The Thomas Walker Maternity Ward," and as to the balance of the sum of ten thousand pounds to invest the same and to apply the income derived therefrom for the purposes of The Thomas Walker Maternity Ward.

Trusts of charitable fund.

**11.** Subject to—

- (a) the appropriation thereof of the said sum of one hundred thousand pounds as in section four of this Act mentioned;
- (b) the appropriation thereof of the sum of ten thousand pounds as in section ten of this Act mentioned;
- (c) the retention thereof of such sums as may be necessary to recoup the trustee of the will and codicil of Thomas Walker deceased all expenditure incurred in the care, upkeep and maintenance of the lands in the Schedules to this Act described and the buildings thereon erected from the third day of March one thousand nine hundred and thirty-eight until the commencement of this Act;

(d)

- (d) the retention thereof of such sums as may be necessary to defray the costs and expenses incurred by such trustee of and incidental to the preparation of this Act and its submission to Parliament and of and incidental to the carrying into effect the provisions of this Act other than the costs of administering the balance of the charitable fund as hereinafter in this section provided;
- (e) the retention thereof of such sums as may be necessary to defray the costs and expenses of the administration of the trusts of such will and codicil (including trustee's commission) as are properly chargeable to the capital of the charitable fund;

the trustee of the will and codicil of Thomas Walker deceased shall hold the balance of the capital and accrued income of the charitable fund in the hands of the trustee of the will and codicil of Thomas Walker deceased at the commencement of this Act upon a perpetual trust to divide the net income thereof remaining after payment of the costs and expenses of administering such fund (including trustee's commission) into three equal parts and—

- (i) to pay and apply two equal parts thereof or such portion thereof as such trustee shall deem proper for the support and maintenance of the Thomas Walker Convalescent Hospital and the Yaralla Cottages in such proportions as such trustee shall think fit;
- (ii) to pay and apply one equal part thereof or such portion thereof as such trustee may deem proper for the support and maintenance of the Dame Eadith Walker Convalescent Hospital for Men;
- (iii) at the end of each year after the commencement of this Act to divide such portion of such annual income as shall not have been paid and applied for the purposes mentioned in paragraphs (i) and (ii) of this section equally between the Royal Alexandra Hospital for Children and the Royal Prince Alfred Hospital:

Provided

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Provided that notwithstanding anything in this section contained the trustee of the will and codicil of Thomas Walker deceased may from time to time pay to the Thomas Walker Convalescent Hospital or the Yaralla Cottages Trust such amount out of the capital of such balance of the charitable fund as such trustee may think fit for any of the purposes mentioned in section eighteen of this Act.

The trustee of the will of Thomas Walker deceased shall before the thirty-first day of March of each year beginning with the year one thousand nine hundred and forty, lodge with the Auditor-General a Capital Account and a Revenue and Expenditure Account of the trust declared by this section made up to the preceding thirty-first day of December.

Powers of trustee of will of Thomas Walker.

**12.** The trustee of the will and codicil of Thomas Walker deceased shall be deemed at all times to have been the trustees of the Thomas Walker Convalescent Hospital and to have had power to conduct, maintain and manage the said Thomas Walker Convalescent Hospital and the investments and funds thereof and to apply for the purposes of the said hospital all or any of the capital and the income of the capital of the sum of one hundred thousand pounds appropriated by them out of the estate of the said Thomas Walker deceased as mentioned in the preamble to this Act for the erection, establishment and maintenance of the said hospital and all moneys received by them from any other source whatsoever.

Constitution of certain bodies corporate.

**13.** (1) From and after the commencement of this Act the trustees for the time being of the Thomas Walker Convalescent Hospital and the trustee of the Yaralla Cottages shall respectively be bodies corporate by the respective names of "The Thomas Walker Convalescent Hospital" and "The Yaralla Cottages Trust."

(2) All courts, judges and persons acting judicially shall take notice of the common seal of each of those corporations.

(3) Such corporations may respectively acquire, purchase, sell, mortgage, lease and hold lands, chattels and other property for the purposes of their respective trusts and for the purposes of this Act:

Provided

Provided that property acquired by gift inter vivos or by will by either of the said corporations shall be administered and appropriated in the manner and for the purposes (if any) expressed by the donors.

(4) Such bodies corporate shall respectively manage and govern the respective charitable trusts whereof they are trustees and may make by-laws not inconsistent with the provisions of this Act for the control and management of their respective trusts and of all officers, servants, visitors, patients and inmates.

(5) So long as the Perpetual Trustee Company (Limited) is a member of a body corporate by this Act created it shall be entitled to payment out of the income of such body corporate of such income commission as would be payable to it if it were the trustee administering the trust administered by such body corporate.

**14.** All land and other property vested in or held by the trustee of the will and codicil of Thomas Walker deceased in trust for the Thomas Walker Convalescent Hospital immediately prior to the commencement of this Act shall vest in the body corporate named The Thomas Walker Convalescent Hospital for all the estate and interest therein previously held by the trustee of the will and codicil of Thomas Walker deceased and the body corporate shall be entitled to all the powers, authorities and discretions and be subject to all the trusts and obligations respectively to which the trustee of the will and codicil of Thomas Walker deceased was for the purposes of such hospital entitled or subject immediately prior to the commencement of this Act.

Vesting in  
the Thomas  
Walker  
Convales-  
cent  
Hospital.

**15.** All land and other property vested in or held by the trustee of the Yaralla Cottages immediately prior to the commencement of this Act shall vest in the body corporate named The Yaralla Cottages Trust created by this Act for all the estate and interest therein previously held by the trustee of the Yaralla Cottages therein and the body corporate shall be entitled to all the powers, authorities and discretions and be subject to all the trusts and obligations respectively to which the trustee of the Yaralla Cottages was entitled or subject immediately prior to the commencement of this Act.

Vesting in  
the Yaralla  
Cottages  
Trust.

**16.**

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of Public  
Hospitals  
Act.

Investment.

**16.** The provisions of paragraphs (d) to (i) inclusive of section nineteen of the Public Hospitals Act, 1929-1937, shall apply to the bodies corporate by this Act created.

**17.** The trustee of the will and codicil of Thomas Walker deceased, The Thomas Walker Convalescent Hospital and The Yaralla Cottages Trust shall respectively have power to invest any of the moneys held by them respectively for the purposes of their respective trusts in this Act mentioned in investments for the time being authorised by law for trust funds and the investments authorised by their respective trusts and also in the purchase of shares or debentures of public companies whether carrying on business in the State of New South Wales or elsewhere (not being companies carrying on the business of mining only) and shall have power from time to time to vary any investment thereof.

Powers  
of bodies  
corporate.

**18.** The Thomas Walker Convalescent Hospital and The Yaralla Cottages Trust shall respectively have power in their respective uncontrolled discretions in relation to their said respective trust properties to add to, repair, reinstate, alter, remodel or demolish any existing buildings or erections upon the respective trust premises and also in their respective uncontrolled discretions to erect any additional buildings thereon which they respectively in regard to their respective trusts may from time to time deem necessary and for such purposes in their respective uncontrolled discretions to use any portion of either the capital or the income of their respective trust funds.

Control  
and  
Manage-  
ment.

**19.** After the establishment and equipment of the Dame Eadith Walker Convalescent Hospital for Men as provided for in section nine of this Act the Royal Prince Alfred Hospital shall control, manage and administer the Dame Eadith Walker Convalescent Hospital for Men:

Provided however that the Governor may from time to time appoint such other persons or corporation as he may determine to control, manage and administer the Dame Eadith Walker Convalescent Hospital for Men.

Act not  
to limit  
jurisdiction  
of Supreme  
Court.

**20.** Nothing in this Act contained shall derogate from the jurisdiction of the Supreme Court of New South Wales to administer and control the charitable trusts the subject-matter of this Act.

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**SCHEDULES**

## SCHEDULES.

## FIRST SCHEDULE.

Sec. 3.

All that piece or parcel of land situated at Concord in the Municipality of Concord, Parish of Concord and County of Cumberland being the whole of the land comprised in certificate of title registered Volume 4819 Folio 63 but excepting thereout the four acres one rood seven and three-quarter perches of land more particularly described in the Second Schedule hereto.

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## SECOND SCHEDULE.

Sec. 3.

All that piece or parcel of land situate at Concord in the Parish of Concord, County of Cumberland, State of New South Wales being part of the land comprised in certificate of title registered Volume 4819 Folio 63 and containing by admeasurement 4 acres 1 rood  $7\frac{3}{4}$  perches more or less Commencing at a point on the mean high water line of Parramatta River said point being the end and termination of the south-eastern side of a road one chain wide and bounded thence on part of the north-west side by the said side of the said road being lines bearing 258 degrees 36 minutes 8 chains  $35\frac{1}{2}$  links and 244 degrees 15 minutes 8 chains  $39\text{-}3/10$  links respectively to a south-eastern building line of Hospital Road Thence on the remainder of the north-west by the south-eastern building line aforesaid of Hospital Road being a line bearing 217 degrees 28 minutes  $60\text{-}3/5$  links Thence on the south-west by a line bearing 128 degrees 29 minutes 30 seconds 2 chains  $57\text{-}57/100$  links Thence on the south-east by lines bearing 64 degrees 15 minutes 7 chains  $57\text{-}57/100$  links and 76 degrees 47 minutes 9 chains 35 links respectively to the mean high water line of Parramatta River aforesaid And thence on the north-east by the high water line of that river bearing north-westerly to the point of commencement be the said area and dimensions all a little more or less.

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