



New South Wales

Charitable Trusts Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Charitable Trusts Act 1993* so as to enable the trustees of certain kinds of trusts to make gifts to “eligible recipients” even though the recipients are not charitable at law. Under current law, trustees of a charitable trust cannot make gifts for non-charitable purposes.

The trusts to which the amendments relate are those referred to in item 2 of the table in section 30-15 of the *Income Tax Assessment Act 1997* of the Commonwealth (known as prescribed private funds and ancillary funds). This covers a particular class of trusts that are philanthropic in nature, and gifts made by them to eligible recipients are tax deductible. The regulations may extend the kinds of trusts to which the new provisions apply.

An **eligible recipient** is defined as a deductible gift recipient within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth. This includes entities that are not technically charitable at law, such as entities with a connection to government (eg the Sydney Opera House Trust).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Charitable Trusts Act 1993* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 contains the amendments to the *Charitable Trusts Act 1993*.

First print



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New South Wales

Charitable Trusts Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Charitable Trusts Act 1993* to enable charitable trusts to make gifts to certain entities without affecting their status as a charitable trust; to validate certain matters; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Charitable Trusts Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5
3 Amendment of Charitable Trusts Act 1993 No 10	6
The <i>Charitable Trusts Act 1993</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1	Amendments	1
	(Section 3)	2
[1] Part 4A		3
Insert after Part 4:		4
	Part 4A Gifts by certain trusts for philanthropic purposes	5
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22A	Definitions	7
	In this Part:	8
	<i>commencement day</i> means the date of assent to the <i>Charitable Trusts Amendment Act 2006</i> .	9
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	<i>eligible recipient</i> means a deductible gift recipient within the meaning of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth, whether or not the deductible gift recipient is a charity at law or (without limitation) is established for a charitable purpose or purposes.	11
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	<i>prescribed trust</i> means a trust:	16
	(a) that establishes and maintains a fund referred to in item 2 of the table in section 30-15 of the <i>Income Tax Assessment Act 1997</i> of the Commonwealth, or	17
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	(b) that is established for charitable or philanthropic purposes and is of a class prescribed by the regulations,	20
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	whether created before, on or after the commencement day.	22
	<i>trust instrument</i> means the initial instrument establishing a prescribed trust, as modified by all validly executed amendments.	23
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22B	Prescribed trust—trust instrument containing express power to give to eligible recipients	25
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	The trust instrument of a prescribed trust may include an express power for the trustees to provide money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.	27
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22C	Prescribed trust—trust instrument not containing express power to give to eligible recipients	1 2
(1)	The powers of the trustees of a prescribed trust, whose trust instrument does not contain an express power to do so, include a power to provide money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient.	3 4 5 6
(2)	Subsection (1):	7
	(a) applies despite any provision to the contrary in the trust instrument, but	8 9
	(b) does not apply in relation to a particular eligible recipient or a particular class of eligible recipients to the extent that there is an express prohibition in the trust instrument against the provision by the trustees of money, property or benefits:	10 11 12 13 14
	(i) to or for that eligible recipient or class of eligible recipients, or	15 16
	(ii) for the establishment of that eligible recipient or class of eligible recipients.	17 18
(3)	Subsection (1) does not apply to the trustees of a prescribed trust unless there is in force a declaration substantially to the effect of the form in Schedule 1 in respect of the prescribed trust.	19 20 21
(4)	For the purpose of making a declaration under this section, the form in Schedule 1 may be modified so as to limit the application of the declaration to a specified eligible recipient or specified class of eligible recipients. If the declaration made in respect of a prescribed trust is so limited, subsection (1) in its application to the prescribed trust has effect only in relation to the specified eligible recipient or specified class of eligible recipients.	22 23 24 25 26 27 28
(5)	The trustees must ensure that the declaration, or a certified copy of it, is retained with the records of the prescribed trust.	29 30
(6)	The trustees are not under a duty to make a declaration under this section, nor are the trustees in breach of a duty in making a declaration under this section.	31 32 33
22D	Ancillary provisions	34
(1)	In this section:	35
	<i>prescribed power</i> , in relation to a prescribed trust, means:	36
	(a) a power referred to in section 22B included in the trust instrument, or	37 38

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| (b) | the power referred to in section 22C as applying to the prescribed trust. | 1
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| (2) | This Act applies to a prescribed trust as if the prescribed power were a power exercisable for a charitable purpose. | 3
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| (3) | Without limiting subsection (2): | 5 |
| (a) | neither the existence nor the exercise of the prescribed power affects the validity or status of a charitable trust as a charitable trust, and | 6
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| (b) | a prescribed trust is to be construed and given effect to in the same manner in all respects as if: | 9
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| (i) | the prescribed power were a power exercisable for a charitable purpose, and | 11
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| (ii) | any payment or application of the trust property or the trust income, or any part of either of them, in the manner allowed by the power were to or for a charitable purpose, and | 13
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| (c) | the existence or exercise of the prescribed power does not affect the control of a prescribed trust by the Court in the exercise of the Court's general jurisdiction with respect to charitable trusts, and | 17
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| (d) | the jurisdiction referred to in paragraph (c) extends to the prescribed power as if the power were exercisable for a charitable purpose. | 21
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| (4) | The provision, before the commencement day, by the trustees of a prescribed trust of money, property or benefits to or for an eligible recipient or for the establishment of an eligible recipient: | 24
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| (a) | is taken to be, and always to have been, a provision for an authorised and valid purpose of the prescribed trust, and | 27
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| (b) | does not affect, and is taken never to have affected, the status of the prescribed trust as a charitable trust. | 29
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| | This subsection applies despite anything to the contrary in the trust instrument. | 31
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| (5) | The inclusion of a power referred to in section 22B in the trust instrument of a prescribed trust before the commencement day is taken to be, and always to have been, validly included. | 33
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[2] Schedule 1	1
Insert at the end of the Act:	2
Schedule 1 Declaration by trustees	3
<p style="text-align: right;">(Section 22C)</p>	4
The trustees of the [<i>insert name of trust</i>], after having regard to the effect of this declaration (including its effect on the liability of the trustees to income tax), declare that the power conferred by section 22C of the <i>Charitable Trusts Act 1993</i> to provide money, property or benefits to or for an eligible recipient, or for the establishment of an eligible recipient, within the meaning of section 22A of that Act, is approved as a power that the trustees for the time being of the [<i>insert name of trust</i>] are authorised to exercise.	5 6 7 8 9 10 11 12 13
Deed dated	14