

# H.M.S. Endeavour Trust Fund Act 1968 No 51

[1968-51]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# H.M.S. Endeavour Trust Fund Act 1968 No 51



New South Wales

An Act to authorise the Trustees of the H.M.S. Endeavour Trust Fund to make a proportionate refund of certain donations made to that Fund and to make certain other payments; and for purposes connected therewith.

## Preamble

WHEREAS during the year one thousand nine hundred and sixty-four a group of interested persons in Sydney resolved to commemorate certain voyages of discovery of Captain Cook and in particular his discovery in the year one thousand seven hundred and seventy of the east coast of Australia; and whereas, pursuant to that resolution, by declaration of trust dated the twelfth day of October, one thousand nine hundred and sixty-four, a Fund (designated therein as the "H.M.S. Endeavour Trust Fund") was constituted with power to the Trustees named therein to collect money and to invest, manage, control and expend it for the purpose of building, in England, a replica of the H.M.S. Endeavour, and having it sailed to Australia so as to arrive, if practicable, before April, one thousand nine hundred and seventy, and thereafter to maintain it as or in connection with a maritime museum and to provide for the maintenance and management in perpetuity of the ship and the museum; and whereas in that declaration of trust it was recited that it had been decided to establish a non-profit making company limited by guarantee under the [Companies Act 1961](#), as subsequently amended, to be known as "Captain Cook's Endeavour Limited", which Company was duly incorporated; and whereas an appeal for donations was duly conducted and donations were collected throughout the Commonwealth of Australia and elsewhere; and whereas due to increases in costs and the insufficiency of the funds in hand it has become apparent that the original purposes of the trust cannot be achieved and it is considered desirable that donations be proportionately refunded to the donors thereof wherever practicable and that any surplus money in the hands of or under the control of the Trustees and Captain Cook's Endeavour Limited be made (after payment of necessary expenses) available for expenditure on the development and maintenance of the Captain Cook Museum and Information Centre at Kurnell, New South Wales, under the control of the Trustees of the Captain Cook's Landing Place:

**BE** it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and 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 Name of Act

This Act may be cited as the *H.M.S. Endeavour Trust Fund Act 1968*.

## 2 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Company** means Captain Cook's Endeavour Limited, referred to in the preamble to this Act.

**donation** means a donation that was made to the Fund and that forms part of the Fund.

**donor** means a person who has made a donation, and, in relation to a natural person, includes his legal personal representatives.

**Fund** means the H.M.S. Endeavour Trust Fund, referred to in the preamble to this Act.

**person** includes a body of persons, whether incorporated or unincorporated.

**Trustees** means the Trustees of the Fund.

## 3 Power to make refunds

The Trustees may, subject to this Act, make a proportionate refund of a donation to the donor thereof.

## 4 Notice

The Trustees shall not make a refund under this Act unless:

- (a) the Trustees give, by advertisement published in such newspaper or newspapers as they think fit and by such other means as they think fit, notice of their intention to make, under this Act, a proportionate refund of a donation made by a person:
  - (i) who, within a period specified for the purpose in the notice under this paragraph, claims to be a donor, and
  - (ii) whose claim is approved by the Trustees, and
- (b) upon the expiration of the period referred to in subparagraph (i) of paragraph (a) of this section, the Trustees notify (as far as practicable) each person who claims to be a donor, but whose claim has not been approved by the Trustees, that, unless it is approved by the Trustees within a period specified for the purpose in the notice under this paragraph, it will be disregarded.

## 5 Approval of claims

The Trustees shall not approve a claim under this Act unless the person making the claim

satisfies the Trustees:

- (a) that he is a donor, and
- (b) as to the amount of his donation.

## **6 Calculation and payment of refunds**

(1) In this section:

**prescribed amount** means the amount that is the difference between:

- (a) the amount that, on the prescribed day, is in the hands of or under the control of the Trustees and the Company, and
- (b) the amount that, on the prescribed day, the Trustees consider to be required for administering and winding up the affairs of the Trustees and the Company.

**prescribed day** means such day as the Trustees decide shall be the prescribed day, being a day not earlier than the day on which the latest of the periods specified under paragraph (b) of section four of this Act expires.

**prescribed total** means the amount that in the opinion of the Trustees is or is as near as practicable to the total amount of donations.

(2) Subject to subsection three of this section, the Trustees may refund, to each person whose claim has been approved under this Act, the amount (to the next cent if a fraction of a cent would otherwise be payable) that bears to the amount of his donation the same proportion as the prescribed amount bears to the prescribed total.

(3) The Trustees shall not:

- (a) refund an amount that would otherwise be payable under subsection two of this section if that amount is less than one dollar, or
- (b) refund to any person an amount that exceeds the amount of his donation.

(4) Where:

- (a) a claim has been approved under this Act,
- (b) in respect of that claim an amount is payable to a person under the foregoing provisions of this section, and

(c) the Trustees are unable to pay that amount to that person for any reason,

the Trustees may pay that amount to the Treasurer to be placed to the credit of the Consolidated Revenue Fund.

(5) The Trustees, when paying any amount to the Treasurer under subsection four of this

section, shall furnish to the Treasurer such particulars with respect to that amount as the Treasurer requires.

- (6) The Treasurer may pay any amount paid to him under subsection four of this section to the person who appears to him to be entitled thereto.
- (7) The person referred to in subsection four of this section shall, if the amount so referred to has not been paid to him under subsection six of this section, but subject to subsection eight of this section, be entitled to recover that amount from the Treasurer.
- (8) Where any amount that has been paid by him to some person appearing to him to be entitled thereto is afterwards claimed by another person, the Treasurer shall not be liable to make any payment to that other person, but that other person may have recourse against the person to whom the Treasurer has paid that amount.
- (9) Any amount to be paid by the Treasurer under subsection six of this section or recovered from the Treasurer under subsection seven of this section shall be paid from the Consolidated Revenue Fund.

## **7 Surplus money**

- (1) The Trustees and the Company respectively shall pay to the Trustees of the Captain Cook's Landing Place, reserved under the *National Parks and Wildlife Act 1967*, for the development and maintenance of the Captain Cook Museum and Information Centre, any surplus money that remains in the hands of or under the control of the Trustees or the Company after provision is made for all payments under section six of this Act and for payment of all amounts necessary to administer and wind up the affairs of the Trustees and the Company.
- (2) Where any money paid under subsection one of this section cannot be expended for the purpose referred to in that subsection, the Minister for the time being administering the *National Parks and Wildlife Act 1967* shall direct for what purpose that money is to be expended, being a purpose:
  - (a) which is of a like nature to that referred to in that subsection, and
  - (b) a gift for which is deductible from the assessable income of the donor thereof under the provisions of the *Income Tax Assessment Act 1936* of the Parliament of the Commonwealth of Australia, as subsequently amended,and that money may thereupon be expended for that purpose.

## **8 No action or suit for refund**

An action or suit for a refund of any donation or part thereof shall not lie against the Trustees.

## **9 Protection of Trustees and Company**

- (1) Payment by the Trustees in accordance with this Act of any amount shall not constitute a breach of trust by the Trustees.
- (2) Payment by the Company in accordance with this Act of any amount shall be deemed to be a payment made in furtherance of the objects of the Company.