



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 26 of 1990

An Act to provide for the continued operation of the James Brown Memorial Trust; to revise the powers and functions of the Trust; to repeal the James Brown Memorial Trust Incorporation Act, 1894; and for other purposes.

WHEREAS Jessie Brown, deceased, who died on 13 November, 1892, by her last will and testament gave the residue of her estate to certain persons as trustees, on trust, for certain charitable and benevolent purposes as a memorial to her late husband, James Brown:

AND WHEREAS the *James Brown Memorial Trust Incorporation Act, 1894*, was enacted to provide for the incorporation of the James Brown Memorial Trust and to prescribe the powers and functions of that Trust:

AND WHEREAS it has become appropriate to restate the purposes of the Trust and to revise the powers and functions of the Trust.

[Assented to 26 April 1990]

The Parliament of South Australia therefore enacts as follows:

Short title

1. This Act may be cited as the *James Brown Memorial Trust Incorporation Act, 1990*.

Repeal

2. The *James Brown Memorial Trust Incorporation Act, 1894*, is repealed.

Interpretation

3. In this Act, unless the contrary intention appears—

“the Declaration of Trust” means the declaration of trust set out in the schedule and includes any subsequent amendment made to the declaration:

“the repealed Act” means the *James Brown Memorial Trust Incorporation Act, 1894*, repealed by this Act:

“the Trust” means the James Brown Memorial Trust incorporated under the repealed Act:

“the Trust property” means the property vested in the Trust from time to time.

The Trust**4. (1) The Trust—**

- (a) continues in existence under the same name as a body corporate with perpetual succession and a common seal;
- (b) has the legal capacity of a natural person;
- and
- (c) may sue and be sued in its corporate name.

(2) Without limiting the effect of subsection (1), the Trust will have the powers, functions and duties conferred, assigned or imposed by the Declaration of Trust.

(3) The Trust will consist of those persons who were, immediately before the commencement of this Act, trustees of the Trust under the repealed Act and such other persons as may be appointed from time to time pursuant to the Declaration of Trust.

(4) The affixation of the common seal of the Trust must be attested by at least two trustees.

(5) Where a document appears to bear the common seal of the Trust and the signatures of at least two trustees attesting the affixation of the common seal, it will be presumed, in the absence of proof to the contrary, that the common seal of the Trust has been duly affixed to that document.

Ability to apply to the Supreme Court

5. The Trust or any two trustees of the Trust may apply to the Supreme Court for advice or direction as to any matter connected with the management or administration of the Trust property or the construction of any document relating to the Trust or the Trust property.

Validity of acts

6. An act or proceeding of the Trust or any committee appointed by the Trust is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Status of Declaration of Trust

7. The Declaration of Trust supersedes all trusts created by or under the repealed Act and the last will and testament of Jessie Brown, deceased.

Construction of certain instruments**8. Subject to any order or direction of the Supreme Court, where—**

- (a) an instrument provides that property is to be held or given for the benefit of an institution;
- and
- (b) the institution is—
 - (i) at the time of the execution of the instrument;
 - or
 - (ii) at the time that the instrument takes effect,owned or operated by the Trust,

the property will be taken to be held or given for the benefit of the Trust.

Acts or omissions under the repealed Act

9. (1) An act or omission performed or made by, or for the benefit of, the Trust (or an institution owned or operated by the Trust) before the commencement of this Act that was not authorized under the repealed Act but that would have been authorized under this Act had the act or omission occurred after the commencement of this Act will be taken to have been validly performed or made.

(2) Nothing in subsection (1) affects any action or proceeding commenced before the commencement of this Act.

Amendment of Declaration of Trust

10. (1) The Trust may, with the approval of the Attorney-General, by a resolution supported by an absolute majority of the trustees, amend the provisions of the Declaration of Trust.

(2) An amendment may, according to its terms (and subject to the approval of the Attorney-General), come into operation—

(a) on a specified day (which may be retrospective or prospective);

or

(b) on the day of its approval by the Attorney-General.

(3) The trustees must, as soon as practicable after the amendment is approved by the Attorney-General, cause notice of an amendment to the provisions of the Declaration of Trust to be published in the *Gazette*.

SCHEDULE
DECLARATION OF TRUST

IT IS DECLARED THAT—

1. (1) The Trust is a public charitable institution established for the purpose of providing—

(a) accommodation (whether in residential units, hostels, nursing homes, infirmaries or otherwise);

(b) hospital services;

and

(c) health and welfare services,

for the benefit or care of members of the public—

(d) who are aged or infirm;

(e) who lack sufficient means;

or

(f) who are otherwise in need of charitable assistance.

(2) The Trust may, by deed, limit any purpose or power conferred by this Declaration of Trust.

(3) A limitation imposed under subclause (2)—

(a) may be unconditional or subject to conditions;

and

(b) may be expressed to operate—

(i) permanently;

(ii) for a specified period;

or

(iii) until revoked or varied by another deed executed by the Trust.

2. The Trust property will be held by the Trust on trust and, subject to this Declaration of Trust, may be applied by the Trust for any of the purposes of the Trust.

3. (1) Subject to this Declaration of Trust, the Trust has power—

(a) to acquire, hold, deal with and dispose of real and personal property;

(b) to erect buildings and structures on land vested in the Trust and to renovate, alter or demolish any of its buildings or structures;

(c) to establish or operate, or to participate in the establishment or operation of, facilities or services designed to advance the purposes of the Trust;

(d) to open and operate bank accounts;

(e) to invest funds not immediately required for its purposes in any security in which trust money may, by Act of Parliament, be invested;

(f) to borrow money;

(g) to give such security for the discharge of liabilities incurred by the Trust as the Trust thinks appropriate;

(h) to enter into contracts of employment, partnerships, joint ventures or other contracts or arrangements;

(i) to receive any gift of property to be applied in furtherance of the purposes of the Trust;

(j) to receive any property with any special direction or limitation and to use such property subject to such direction or limitation in furtherance of the purposes of the Trust;

(k) to make donations and other gifts;

(l) to charge fees and recover out of pocket expenses;

(m) to exercise any other powers that are contemplated by this Declaration of Trust or necessary or expedient for the fulfilment of its purposes.

(2) Without limiting the generality of any other provision of this Declaration of Trust, the Trust may—

(a) use any hospital, nursing home or other facility established by the Trust for teaching purposes;

and

(b) insofar as may be consistent with its purposes, establish links or seek accreditation with teaching hospitals and educational or research institutions, and make payments to such hospitals and institutions.

(3) The Trust may appoint or engage solicitors, accountants or other agents to assist it in the performance of its powers and the fulfilment of its purposes.

4. (1) The Trust will consist of at least seven trustees.

- (2) The trustees may, by special resolution—
 - (a) fill any vacancy in the office of a trustee;
 - (b) add to their number as they think fit.
- (3) The trustees may, by special resolution, remove a trustee from office.
- (4) The office of a trustee becomes vacant if the trustee—
 - (a) dies;
 - (b) resigns by written notice to the Trust;or
 - (c) is removed from office under subclause (3).
5. (1) The trustees may establish such committees as they think fit.
- (2) A committee may, but need not consist of, or include, any of the trustees.
- (3) The powers and functions of a committee, the quorum of a committee, and the procedures to be observed in relation to the conduct of the proceedings of a committee, will be as determined by the trustees (although a committee may, in the absence of a determination of the trustees on a particular procedural matter, determine that matter itself).
6. The trustees may appoint a Secretary of the Trust, and such other officers of the Trust, as they think fit.
7. (1) The trustees may delegate any of the powers or functions of the Trust—
 - (a) to a particular trustee, or trustees;
 - (b) to a committee established by the trustees;
 - (c) to the Secretary of the Trust;
 - (d) to any other person;or
 - (e) to a person for the time being holding or occupying a particular office or position.
- (2) A delegation under subclause (1)—
 - (a) may be unconditional or subject to conditions;
 - (b) does not derogate from the ability of the trustees to act in any matter;and
 - (c) is revocable at will by the trustees.
- (3) The trustees cannot delegate a power under clause 4.
8. (1) The trustees will before 30 June in each year elect one of their number to chair the meetings of the Trust for the ensuing financial year.
- (2) The trustees may also elect one of their number to act as the deputy to the trustee elected under subclause (1).
- (3) A trustee retiring from office under subclause (1) or (2) is eligible for re-election.
- (4) In the event of a casual vacancy in an office under subclause (1) or (2), the trustees may elect another trustee to the vacant office for the remainder of the financial year.
- (5) In the absence of the trustee elected under subclause (1) at a meeting of the Trust, his or her deputy will preside, and in the absence of them both, the trustees present at the meeting may choose one of their number to preside.
- (6) A meeting of the Trust may be called—
 - (a) by the person elected to chair meetings of the Trust, under subclause (1), or by his or her deputy;or
 - (b) by any two trustees.
- (7) Except in a case of emergency, where two trustees call a meeting under subclause (6) (b), they must give the other trustees at least seven days notice of the meeting.
- (8) A notice under subclause (7)—
 - (a) must be in writing;
 - (b) must set out the date, time and place of the meeting;
 - (c) must be signed by the trustees calling the meeting;and
 - (d) must specify the general nature of the business to be transacted at the meeting.
- (9) Four trustees constitute a quorum at a meeting of the Trust and no business may be transacted unless a quorum is present.

(10) Each trustee present at a meeting of the Trust is entitled to one vote on a matter arising for decision at the meeting and, except where a special resolution is required, the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(11) Except where a special resolution is required, a decision carried by a majority of the votes cast by the trustees present at a meeting is a decision of the Trust.

(12) A decision concurred in by trustees otherwise than at a meeting of the Trust is a valid decision of the Trust if all of the trustees have signified their concurrence in the decision by letter, telegram, telex, facsimile transmission or other method of written communication.

(13) The trustees must cause an accurate record to be kept of their proceedings.

(14) Subject to this Declaration of Trust, the procedures to be observed in relation to meetings of the Trust will be as determined by the trustees.

9. (1) No personal liability attaches to a trustee for an act or omission by the trustee or the Trust in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of the trustee or the Trust's powers, functions or duties.

(2) A liability that would, but for subclause (1), lie against a trustee will lie against the Trust.

10. A trustee is not liable for the debts and liabilities of the Trust.

11. The Trust is liable for any costs or expenses involved or incurred in insuring the trustees against risks associated with the performance of their functions.

12. The Trust may make, alter or repeal such rules and regulations as it thinks fit in relation to the management of the business and affairs of the Trust.

13. (1) Where a provision of this Declaration of Trust requires that notice be given to the trustees, the notice may be given to each trustee—

(a) personally;

or

(b) by delivery (whether by post or otherwise) to the usual place of business or residence of the trustee, or to such other place as the trustee may authorize in writing.

(2) For the purposes of subclause (1) (b), a notice will be taken to have been given to a trustee—

(a) in the case of delivery by post—at the time that the notice would be delivered in the ordinary course of post;

(b) in any other case—at the time of delivery to the particular place.

14. In this Declaration of Trust—

“special resolution” means a resolution of the trustees of the Trust as to which the following conditions are satisfied:

(a) at least seven days written notice, setting out the terms of the proposed resolution, is given to the trustees;

and

(b) the resolution is supported at a duly convened meeting of the trustees by an absolute majority of the trustees.

15. The trustee who was, immediately before the commencement of this Declaration of Trust, the Chairman of the Trust, and the trustee who was, immediately before the commencement of this Declaration of Trust, the Deputy Chairman of the Trust, will continue to hold their respective offices until the next succeeding 30 June.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor