

South Australia

## **Carrick Hill Trust Act 1985**

An Act to establish the Carrick Hill Trust; to define its powers and functions; and for other purposes.

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### **The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Carrick Hill Trust Act 1985*.

### **3—Interpretation**

In this Act, unless the contrary intention appears—

*the repealed Act* means the *Carrick Hill Vesting Act 1971* repealed by this Act;

*the Trust* means the Carrick Hill Trust established by this Act.

### **4—Transitional provisions**

- (2) Upon the commencement of this Act, the property known as "Carrick Hill" vested in the Crown pursuant to the repealed Act (being the whole of the land comprised in Certificates of Title Volume 1718 Folio 159 and Volume 2500 Folio 57), together with all personal property vested in the Crown pursuant to that Act or acquired by the Crown for use at or in connection with Carrick Hill, shall vest in the Trust.
- (3) All rights and liabilities of the Crown arising out of the real and personal property referred to in subsection (2) shall, upon the commencement of this Act, vest in the Trust.
- (4) The Registrar-General shall, upon application by the Trust and upon being furnished with such duplicate certificates of title or other documents as he may require, register the Trust as the proprietor of an estate in fee simple in the land vested in the Trust pursuant to this section.
- (5) No registration fee or stamp duty shall be payable by the Trust in respect of an application under subsection (4).

## **Part 2—The Carrick Hill Trust**

### **Division 1—Constitution of the Trust**

#### **5—Establishment of the Trust**

- (1) There shall be a body entitled the "Carrick Hill Trust".
- (2) The Trust—
  - (a) shall be a body corporate with perpetual succession and a common seal; and
  - (b) shall be capable of suing and being sued; and
  - (c) shall be capable in its corporate name of acquiring, holding, disposing of and otherwise dealing with real and personal property; and
  - (d) shall be capable of acquiring or incurring any other rights or liabilities; and

- (e) shall have the powers, authorities, duties and obligations prescribed by or under this Act.
- (3) The Trust shall hold its property on behalf of the Crown.
- (4) Where an apparently genuine document purports to bear the common seal of the Trust, it shall be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Trust was duly affixed to that document.

## **6—Trust subject to control of Minister**

The Trust shall be subject to the control and direction of the Minister.

## **7—Membership of the Trust**

- (1) The Trust shall consist of seven members appointed by the Governor.
- (2) One of the persons appointed to the Trust shall be a person who is a member of the council of the City of Mitcham, nominated by that Council.
- (3) One of the members of the Trust shall be appointed by the Governor to be Chairman of the Trust, and one other member shall be appointed by the Governor to be Deputy Chairman of the Trust.
- (4) The Governor may appoint a suitable person to be a deputy of any member of the Trust other than the Chairman, and a person so appointed may act as a member of the Trust in the absence of the member of whom he has been appointed a deputy.

## **8—Conditions of membership**

- (1) A member of the Trust shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment.
- (2) A member of the Trust shall, upon the expiration of a term of office, be eligible for reappointment.
- (3) The Governor may remove a member of the Trust from office for—
  - (a) mental or physical incapacity to carry out satisfactorily the duties of his office; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (4) The office of a member of the Trust becomes vacant if—
  - (a) he dies; or
  - (b) his term of office expires; or
  - (c) he resigns by written notice addressed to the Minister; or
  - (d) he is removed by the Governor under subsection (3).
- (5) Upon the office of a member of the Trust becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

## **9—Allowances and expenses**

A member of the Trust shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

## **10—Disclosure of interest**

- (1) A member of the Trust who is directly or indirectly interested in a contract or proposed contract made by, or in the contemplation of, the Trust—
  - (a) shall, as soon as he becomes aware of the contract, or the proposal to make the contract, disclose the nature of his interest to the Trust; and
  - (b) shall not take part in any deliberations or decision of the Trust with respect to that contract.

Penalty: One thousand dollars.

- (2) Subsection (1) does not apply in respect of an interest that exists only by virtue of the fact that a member is an employee of the Trust.
- (3) A disclosure made under this section shall be recorded in the minutes of the Trust.
- (4) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section, or his interest in a contract or proposed contract is not such as need be disclosed under this section—
  - (a) the contract is not liable to be avoided by the Trust on any ground arising from the fiduciary relationship between the member and the Trust; and
  - (b) the member is not liable to account to the Trust for profits derived from the contract.

## **11—Procedure at meetings of the Trust**

- (1) The Chairman or, in his absence, the Deputy Chairman shall preside at a meeting of the Trust and, in the absence of both the Chairman and the Deputy Chairman, a member chosen by the members present at the meeting shall preside at that meeting.
- (2) Four members of the Trust shall constitute a quorum of the Trust and no business shall be transacted at a meeting of the Trust unless a quorum is present.
- (3) A decision carried by a majority of the votes of the members present at a meeting of the Trust shall be a decision of the Trust.
- (4) Each member present at a meeting shall be entitled to one vote on any matter arising for decision at that meeting and, in the event of an equality of votes on any matter, the person presiding at the meeting shall have a second, or casting, vote.
- (5) The Trust shall cause accurate minutes to be kept of its proceedings at meetings.
- (6) Subject to this Act, the business of the Trust shall be conducted in such manner as the Trust may determine.

## **12—Validity of acts of the Trust and immunity of its members**

- (1) An Act or proceeding of the Trust shall not be invalid by reason of a vacancy in its membership, or by reason of a defect in the appointment of a person to the Trust.

- (2) No liability shall attach to a member of the Trust for any act or omission by him, or by the Trust, in good faith and in the exercise of his or its powers or functions, or in the discharge of his or its duties, under this Act.
- (3) A liability that would, but for subsection (2), lie against a member of the Trust shall lie against the Crown.

## **Division 2—Functions and powers of the Trust**

### **13—General functions and powers of the Trust**

- (1) The functions of the Trust are as follows:
  - (a) to administer, develop and maintain Carrick Hill for all or any of the following purposes:
    - (i) as a gallery for the display of works of art;
    - (ii) as a museum;
    - (iii) as a botanical garden; and
  - (b) to promote and encourage the interest of the public in Carrick Hill, its collections and the services and amenities provided by the Trust; and
  - (c) to perform any other functions assigned to the Trust by this Act or the Minister.
- (2) For the purpose, or in the course, of performing its functions, the Trust may—
  - (a) establish subcommittees (which may, but need not, consist of, or include, members of the Trust) to advise the Trust on any aspect of its functions;
  - (b) delegate any of its powers under this Act to a subcommittee, member of the Trust or other person;
  - (c) purchase, receive, take on hire or loan or otherwise acquire objects of artistic, historical or cultural interest;
  - (d) sell, lend or exchange objects of artistic, historical or cultural interest;
  - (e) purchase, receive, take on hire or loan, sell, lend, or otherwise acquire, hold, deal with or dispose of real or personal property;
  - (f) provide facilities for refreshment and other amenities at Carrick Hill;
  - (g) establish and maintain a shop at Carrick Hill;
  - (h) provide musical or theatrical entertainment at Carrick Hill;
  - (i) fix opening and closing times in respect of admission to Carrick Hill, or any part of it;
  - (j) make charges for admission to Carrick Hill, or any part of it;
  - (k) make charges for any services or amenities provided by the Trust;
  - (l) apply for, and hold, licences under the *Licensing Act 1967*;
  - (m) enter into any contract or arrangement relevant to the functions of the Trust;
  - (n) do anything else that is necessary for, or incidental to, the performance of its functions.

- (3) A delegation under subsection (2)(b) is revocable at will and does not derogate from the power of the Trust to act itself in any matter.
- (4) The Trust is not obliged to accept or retain material that is not, in the opinion of the Trust, of sufficient artistic, historical or cultural interest to justify its display at Carrick Hill.
- (5) The Trust shall not, without the approval of both Houses of Parliament, sell or otherwise dispose of any of its real property.
- (6) The Trust shall not, without the consent of the Minister, sell or otherwise dispose of any object owned by it that is of artistic, historical or cultural interest.

#### **14—Governor may place Crown land under the control of the Trust**

- (1) Where it is in the opinion of the Governor expedient to do so, he may place any Crown land under the care, control and management of the Trust.
- (2) Land placed under the care, control and management of the Trust pursuant to this section shall be administered by the Trust in accordance with the provisions of this Act and shall, for the purposes of this Act, be deemed to be part of Carrick Hill.

#### **Division 3—Staff of the Trust**

##### **15—Officers and employees**

- (1) The Governor may, subject to and in accordance with the *Public Service Act 1967*, appoint officers to assist the Trust in the administration of this Act.
- (2) An officer so appointed shall hold office in accordance with the *Public Service Act 1967*.
- (3) The Minister may employ persons to assist the Trust in the performance of its functions.
- (4) The *Public Service Act 1967* shall not apply to a person employed under subsection (3).

#### **Division 4—Financial provisions**

##### **16—Dealings with moneys of the Trust**

- (1) All moneys received by the Trust shall be paid into an ADI account established by the Trust.
- (2) An ADI account established by the Trust shall be operated by a cheque signed and countersigned by such persons as the Trust may appoint for the purpose.
- (3) Any moneys of the Trust that are not immediately required for the purposes of the Trust may be invested in such manner as the Treasurer may approve.
- (4) Except as authorised by the Minister, the moneys appropriated by Parliament for the purposes of the Trust shall not be expended by the Trust except in accordance with a budget approved by the Minister.

### **17—Borrowing of moneys**

- (1) The Trust may, for the purposes of this Act, borrow moneys from the Treasurer or, with the consent of the Treasurer, from any other person.
- (2) A liability incurred by the Trust under subsection (1) with the consent of the Treasurer is guaranteed by the Treasurer.
- (3) A liability of the Treasurer under a guarantee arising by virtue of subsection (2) shall be satisfied out of the General Revenue of the State, which is appropriated by this section to the necessary extent.

### **18—Accounts and audit**

- (1) The Trust shall cause proper accounts to be kept of its financial affairs.
- (2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Trust.
- (3) For the purpose of an audit under subsection (2), the Auditor-General may exercise, in relation to the accounts of the Trust and the officers and employees of the Trust, the powers that are vested in the Auditor-General by the *Audit Act 1921* in respect of public accounts and accounting officers.

## **Part 3—Miscellaneous**

### **19—Report**

- (1) The Trust shall, on or before the thirtieth day of September in each year, deliver to the Minister a report upon the administration of this Act during the period of twelve months that ended on the preceding thirtieth day of June.
- (2) The report must incorporate the audited statement of accounts for the Trust in relation to the relevant period.
- (3) The Minister shall cause a copy of a report submitted to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

### **20—Stamp duty not payable on instruments of conveyance to the Trust**

No stamp duty is payable on any instrument by virtue of which real or personal property is assured to, or vested in, the Trust.

### **21—Damage etc to property of the Trust**

- (1) A person who, without the authority of the Trust—
  - (a) damages or destroys any property of the Trust; or
  - (b) removes any property of the Trust from the possession or control of the Trust,shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars or imprisonment for three months.
- (2) The court before which a person is convicted of an offence under subsection (1) may order the convicted person to pay to the Trust compensation for loss suffered by the Trust in consequence of the commission of the offence.

- (3) Any compensation awarded under subsection (2) may be recovered in the same manner as a fine.
- (4) This section does not derogate from criminal liability to which a person may, apart from this section, be subject.

## **22—Proceedings**

Proceedings for an offence against this Act shall be disposed of summarily.

## **23—Regulations**

- (1) The Governor may, upon the recommendation of the Trust, make such regulations as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
  - (a) provide for the admission, exclusion or expulsion of members of the public to or from Carrick Hill, or any part of it;
  - (b) regulate, restrict or prohibit the driving or parking of motor vehicles on land vested in, or under the care, control and management of, the Trust;
  - (c) regulate, restrict or prohibit the consumption of alcohol within the precincts of Carrick Hill;
  - (d) prohibit disorderly or offensive behaviour or the making of undue noise within the precincts of Carrick Hill;
  - (e) regulate, restrict or prohibit the commercial use of the name "Carrick Hill" by any person other than the Trust;
  - (f) prescribe penalties, not exceeding one thousand dollars, for breach of, or non-compliance with, the regulations;
  - (g) fix expiation fees, not exceeding \$75, for alleged offences against the regulations.
- (3) In any proceedings for an offence against a regulation—
  - (a) an allegation in a complaint that a person named in the complaint was the owner of a specified vehicle on a specified day shall be deemed to be proved in the absence of proof to the contrary; and
  - (b) where it is proved that a vehicle was parked on land vested in, or under the care, control and management of, the Trust in contravention of a regulation, it shall be presumed, in the absence of proof to the contrary, that the vehicle was so parked by the owner of the vehicle.



## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Carrick Hill Trust Act 1985* repealed the following:

*Carrick Hill Vesting Act 1971*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1985	28	<i>Carrick Hill Trust Act 1985</i>	28.3.1985	16.5.1985 ( <i>Gazette 16.5.1985 p1534</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 8)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 10)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 25 (ss 47—49)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	omitted under <i>Legislation Revision and Publication Act 2002</i>	
s 4		

## Carrick Hill Trust Act 1985—1.7.1999 to 31.1.2010

### Legislative history

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s 4(1)	omitted under <i>Legislation Revision and Publication Act 2002</i>	
Pt 2		
s 16		
s 16(1)	amended by 33/1999 Sch (item 10(a))	1.7.1999
s 16(2)	amended by 33/1999 Sch (item 10(b))	1.7.1999
Pt 3		
s 23		
s 23(2)	amended by 34/1996 s 4 (Sch cl 8)	3.2.1997
s 23(4)	<i>deleted by 34/1996 s 4 (Sch cl 8)</i>	3.2.1997

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### 5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

## Historical versions

Reprint No 1—3.2.1997