



PLOMLEY TRUSTS ACT 1984

No. 96 of 1984

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AN ACT to revoke certain trusts created by Norman James Brian Plomley for the purposes of preserving documents and other materials relating to, and encouraging research into, the Tasmanian Aborigines and to make other provision in place of those trusts.

[Royal Assent 12 December 1984]

WHEREAS—

Preamble.

I—Norman James Brian Plomley, Retired University Lecturer (in this Preamble referred to as “ the Settlor ”), has made a settlement of property for the purpose of developing a definitive collection of documentary and associated

materials relating to the Tasmanian Aborigines, supporting research into, and publishing materials on, the Tasmanian Aborigines and for certain other purposes:

- II—The trusts to which that settlement of property are subject are, firstly, the trusts specified in a deed dated 16th January 1979 between the Settlor and Perpetual Trustees and National Executors of Tasmania Limited (which deed is in this Preamble referred to as “the Income Trust”) and, secondly, the trusts specified in a deed dated 30th March 1979 between the Settlor of the one part and George Deas Brown, Solicitor, Peter Eldon Cripps, Architect, Rodney Kay Crook, Professor, Peter Faye Murray, Doctor of Anthropology, and Alma Lily Stackhouse, Married Woman of the other part (all of whom are in this Preamble referred to as “the Research Trustees” and which deed is in this Preamble referred to as “the Research Trust”):
- III—The Income Trust provides for the payment of the income arising from certain property to the State of Tasmania until 16th January 1992 and then for the vesting of that property in Ann Cripps, Married Woman, the daughter of the Settlor for her own use and benefit absolutely with a substitutionary gift to her children and for certain other matters:
- IV—The Research Trust provides for further gifts of money and certain property to constitute the “Tasmanian Aboriginal Research Fund” and the “Tasmanian Aboriginal Collection”:
- V—The terms of the Research Trust relating to the appointment of new trustees have been varied by a further deed between the Settlor and the Research Trustees dated 20th June 1980:
- VI—The Settlor has incurred expenses amounting to \$12 365 in and about research undertaken for purposes similar to the purposes of the trusts mentioned in this Preamble:
- VII—The Settlor and the corporation of the City of Launceston have made an agreement dated 27th January 1984 providing for continuing research into matters relating to the Tasmanian Aborigines in the event of the trusts arising from the Income Trust and the Research Trust being revoked:

VIII—A copy of the agreement referred to in paragraph VII of this Preamble is set out in Schedule 1 to this Act:

IX—On 12th November 1984—

- (a) the only person continuing in office as a trustee pursuant to the trusts arising from the Research Trust was Alma Lily Stackhouse, referred to in paragraph II of this Preamble;
- (b) the property to which the Income Trust relates was the property specified in Schedule 2 to this Act; and
- (c) the property to which the Research Trust relates was the property specified in Schedule 3 to this Act: and

X—It is expedient to revoke the trusts arising from the Income Trust and the Research Trust and to make other provision for the settlement and distribution of the property respectively specified in Schedules 2 and 3 to this Act:

BE it therefore enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Plomley Trusts Act 1984*.

Short title.

2—This Act shall commence on the day on which it receives the royal assent.

Commencement.

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

Interpretation.

- “ the appointed day ” means the day appointed by the Minister pursuant to section 5 (5);
- “ the Beneficiary ” means Ann Cripps, referred to in paragraph III of the Preamble to this Act;
- “ the City ” means the corporation of the city of Launceston;
- “ the Income Trust ” means the Income Trust referred to in paragraph II of the Preamble to this Act;
- “ the Income Trustee ” means Perpetual Trustees and National Executors of Tasmania Limited referred to in paragraph II of the Preamble to this Act;
- “ the Research Trust ” means the Research Trust referred to in paragraph II of the Preamble to this Act;

“ the Research Trustee ” means Alma Lily Stackhouse, referred to in paragraph II of the Preamble to this Act or, if another person is appointed under section 4 as trustee for the purposes of performing a duty imposed under section 5 (2) (b) or (d), that other person;

“ the Settlor ” means Norman James Brian Plomley, referred to in paragraph I of the Preamble to this Act.

Power to
appoint
trustee for
purposes of
Research
Trust.

4—(1) If the Governor is of the opinion that it is expedient to do so for the purposes of this Act, the Governor may appoint a person to act as trustee for the purpose of performing a duty imposed under section 5 (2) (b) or (d).

(2) An appointment under subsection (1) is as valid and effectual for the purposes of that subsection as if made pursuant to the powers conferred on the Governor by the Research Trust as varied by the deed referred to in paragraph V of the Preamble to this Act.

(3) The powers conferred on the Governor by subsection (1) are in addition to the powers conferred on him by the Research Trust as varied by the deed referred to in paragraph V of the Preamble to this Act.

Revocation
of trusts
and vesting
of trust
property.

5—(1) On the appointed day—

- (a) the trusts arising from the Income Trust and the Research Trusts are revoked and the property referred to in Schedules 2 and 3 is freed and discharged from those trusts;
- (b) one-half of the property specified in Schedule 2 shall vest in the Beneficiary for her own use and benefit absolutely;
- (c) the Settlor is entitled to be paid out of the remaining one-half of the property referred to in Schedule 2 an amount certified pursuant to subsection (3) as his legal costs;
- (d) the Settlor is entitled to be paid out of the money specified in Schedule 3 an amount of \$12 365; and
- (e) the residue of the property referred to in Schedules 2 and 3 shall, notwithstanding the agreement referred to in paragraph VII of the Preamble to this Act, vest in the City to be held pursuant to the provisions of that agreement.

- (2) On, or as soon as practicable after, the appointed day—
- (a) the Income Trustee shall pay—
 - (i) one-half of the money specified in Schedule 2 to the Beneficiary;
 - (ii) out of the remaining one-half of that money, an amount as legal costs as provided by subsection (3) to the Settlor, or as he may direct; and
 - (iii) the balance of that money to the City;
 - (b) the Research Trustee shall, out of the money specified in Schedule 3, pay to the Settlor, or as he may direct, the amount of \$12 365 mentioned in subsection (1) (d) and shall pay the balance of that money to the City;
 - (c) the State Librarian shall, on request by the City, deliver up to the City the books, periodicals, manuscripts, and other documents referred to in Schedule 3; and
 - (d) the Income Trustee and the Research Trustee shall execute such transfers and other assurances and make such arrangements as may be necessary to give effect to the provisions of this section.
- (3) For the purposes of subsection (1) (c), the Registrar of the Supreme Court shall, on application by the Settlor, certify in writing to the Attorney-General such amount as he considers appropriate as legal costs incurred by the Settlor arising out of, or in any way incidental to, the enactment of this Act.
- (4) For the purposes of subsection (3)—
- (a) the Registrar of the Supreme Court shall have regard to the scale of fees allowed to solicitors pursuant to the rules in force under the *Supreme Court Civil Procedure Act 1932*; and
 - (b) the Settlor shall provide the Registrar with such documents and such information as the Registrar may require.
- (5) The Minister may, by notice published in the *Gazette*, fix a day as the appointed day for the purposes of this Act.

6—Notwithstanding the provisions of the *Stamp Duties Act 1931*—

Exemptions
from stamp
duty.

- (a) a document executed to give effect to any vesting provided for by this Act is not liable to stamp duty; and

- (b) if, within one year after the appointed day, the Beneficiary makes a disposition of any property vested in her under section 5 (1) (b) in favour of, or for the benefit of, one or more of her children, a document executed by her is not liable to stamp duty so far as it relates to that disposition.

Indemnity
for trustees.

7—(1) On and from the appointed day, no action or legal proceeding may be instituted against the Income Trustee, the Research Trustee, or any other trustee referred to in paragraph II of the Preamble to this Act in respect of the administration, or intended administration, before that day of the trusts arising from the Income Trust or the Research Trust.

(2) Subsection (1) does not apply to, or in relation to, an action to compel a person to perform a duty imposed by this Act.

Saving for
Income
Trustee's
commission,
&c.

8—Nothing in this Act shall be construed so as to affect the right of the Income Trustee, before it makes a payment as required by this Act—

- (a) to charge commission in accordance with the *Trustee Companies Act 1953* in respect of its administration of the trusts arising from the Income Trust before the appointed day; or
- (b) to reimburse itself out of the property of those trusts for any expenses properly incurred by it in, or about, the administration of those trusts before that day.
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SCHEDULE 1 Preamble, paragraph VIII

AGREEMENT FOR ESTABLISHMENT OF THE PLOMLEY FOUNDATION

THIS AGREEMENT is made the 27th day of January 1984 BETWEEN NORMAN JAMES BRIAN PLOMLEY of Hobart in Tasmania (hereinafter called "the Settlor") of the one part and THE MAYOR ALDERMEN AND CITIZENS OF THE CITY OF LAUNCESTON (hereinafter called "the City") of the other part WHEREAS the City has become vested in a collection of books, records, papers, pictures, films, artefacts and other materials as a gift from the Settlor (described in the First Schedule hereto) (hereinafter called "the Plomley Collection" which expression shall include all additions thereto) AND WHEREAS by the act of the Settlor the City has received certain moneys and assets (described in the Second Schedule hereto) and the City has agreed to apply them only to the use of the Queen Victoria Museum and Art Gallery ("the Museum") for the support of a project for research and publication of matters concerning the Tasmanian Aborigines and to add to and develop "the Plomley Collection" by the purchase of books manuscripts and other records both original and copies relating to the Tasmanian Aborigines and by employing competent persons to obtain information so as to increase the usefulness of "the Plomley Collection" and to use its funds for such other purposes as may be from time to time decided provided only that the funds shall be used for research of high quality on subjects of concern to the said Museum, for the publication of such research or for the acquisition of objects for the collections of the said Museum AND WHEREAS the activities dealt with by this Agreement shall collectively be known as "the Plomley Foundation" (hereinafter called "the Foundation").

Definitions

- "the Tasmanian Aborigines" shall mean those people who inhabited the territory now known as the State of Tasmania before the time of settlement by Europeans as well as the descendants of the said Aborigines.
- "The Collection" shall mean "the Plomley Collection" of books, records, papers, pictures, films, artefacts and other materials given to the Museum by the Settlor and all additions thereto.
- "Funds" shall mean such of the moneys comprising the Capital Fund or the Working Fund and shall include either or both of them as described and referred to in Paragraph 3 "Finances" hereunder.

AND WHEREAS the Settlor has been instrumental in making the collection and providing the funds for the support of same AND WHEREAS the City has requested the Settlor to manage and direct the activities of the Museum in so far as the same relate to the Foundation which he has agreed to do.

1. The City agrees with the Settlor that the Queen Victoria Museum and Art Gallery which is vested in it by virtue of Act No. 5 of 1895 will safely house the said Collection and use the Funds of the Foundation and ensure that the funds are so used for the following purposes:

- (a) To encourage, promote, support, undertake, assist in and provide funds for scholarly research of a high standard into matters relating directly and indirectly to the Tasmanian Aborigines and to give financial support to the publication of such research.
- (b) To provide funds for the acquisition of materials to be added to the Collection.
- (c) To use such funds as may be decided on from time to time for research and publication on subjects of concern to the Museum and for the acquisition of objects for the collections of the Museum provided only that the activities set out in (a) and (b) above have been taken fully into account.
- (d) To keep the Collection separate from other collections in the Museum, to keep it in good order and condition and to hold it in its own control in the City of Launceston without cost to the Foundation.
- (e) To make the Collection available for consultation by such persons and under such conditions as the Director of the Museum shall decide from time to time but shall not allow any part of the Collection to be removed permanently from the City of Launceston.
- (f) To provide copies of items of the Collection when asked for but on such terms and conditions as the Director of the Museum shall decide.
- (g) To see to it that all data arising out of research sponsored by the Foundation and all publications receiving support from the Foundation shall be added to the Collection free of charge and under such terms as the Director of the Museum shall decide; and
- (b) To see to it that the Director of the Museum ensures that the objects and purposes hereinbefore set out are pursued actively.

2. NOW IT IS HEREBY ALSO AGREED as follows:

- (a) The City does hereby appoint the Settlor, the said Norman James Brian Plomley and the Director for the time being of the Museum to be the Managers of the Foundation (hereinafter called "the Management Committee").
- (b) After the death of the Settlor or from the date of his retirement, the City agrees to replace the Settlor on the Management by a senior member of the staff of the University of Melbourne selected by the Vice-Chancellor of that University and preferably a member of its History Department who shall be competent to make judgments upon the activities of the Foundation and will take an active interest in advancing its objects and purposes.
- (c) The Management Committee shall meet by arrangement as often as seems desirable, but never less than once in each calendar year.
- (d) The Management Committee may seek advice on matters of interest to the Foundation and may pay fees and expenses to such advisers.

- (e) During his lifetime Norman James Brian Plomley shall by reason of his knowledge of the subject for which this agreement has been entered into have the right to make control of the affairs of the Collection in his absolute discretion, and shall be paid such fees and reimbursements of expenses as he shall demand, as well as to incur expenditure on secretarial or search staff to assist him in his research or other activities on behalf of the Foundation within the limits of the moneys available.
- (f) The Management Committee through the Director of the Museum shall report annually to the Launceston City Council on the activities and state of finances of the Foundation.
- (g) In the event of any disagreement between the members of the Management Committee such disagreement shall be referred to arbitration and this clause shall be deemed to be a submission to arbitration for the purposes of the Arbitration Act 1892.

3. *Finances*

- (a) The assets and moneys received by the Foundation shall be assigned to one or other of a Capital Fund or a Working Fund by agreement between the City Treasurer and the Management Committee.
- (b) The Capital Fund shall comprise those assets of the Foundation which will provide funds by way of income for the operations of the Foundation.
- (c) The Capital Fund shall be invested and managed by the City Treasurer and the Director of the Museum and in such a way as to ensure the continued effective operation of the Foundation.
- (d) The Working Fund shall contain the funds to be employed in the operations of the Foundation and its management and its use shall be at the absolute discretion of the Management Committee.
- (e) Funds may be transferred from the Capital Fund to the Management Fund and from the Management Fund to the Capital Fund by agreement between the Managers of the two funds, provided only that the Management Fund may accumulate moneys for its purposes but not for investment.
- (f) In cases of dispute concerning the management of the Capital and Working Funds the Launceston City Council shall adjudicate and decide on the course to be pursued having as its prime objective the active continuation and attainment of the Foundation's aims and objectives.

4. This Agreement shall continue until the Settlor the said Norman James Brian Plomley either dies or attains the age of eighty years, when the management shall pass to a new Management Committee formed pursuant to Clause 2 (b) hereof and otherwise in the terms hereof.

5. In the event of this Agreement needing alteration to better pursue its purposes the same may be so altered with the consent of the Management Committee and the City.

6. The City shall in addition to the power of purchase hereinbefore recited, have the power to accept by way of gift settlement or other mode of acquisition such assets both real and personal as it shall in its absolute discretion deem proper for the extension carrying out or furtherance of both the Collection or the Foundation's aims and objectives or both.

7. IT IS HEREBY AGREED AND DECLARED that upon the return to the Settlor of a certain book collection and funds comprising the assets of two trusts, one dated the 16th day of January, 1979 and made between the Settlor of the one part and the Perpetual Trustees and National Executors of Tasmania Limited of the other part, the other dated the 13th day of March, 1979 made between the Settlor of the one part and certain five Trustees therein named of the other part both trusts being collectively known as the "Tasmanian Aboriginal Research Trust", the Settlor will make a gift of the Collection and funds (or such of the same as are not otherwise then the subject of any other agreement for their disposal) to the City to be added to and form part of the settlement and to be subject to all the terms and conditions hereof to be accepted and used by the City by way of addition to the Collection or to the Foundation's Funds or otherwise in active continuation and pursuit of the Foundation's aims and objectives.

8. It is hereby agreed that the Collection will at all times be publicly referred to as "the Plomley Collection" and the Foundation as "the Plomley Foundation".

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first hereinbefore written.

FIRST SCHEDULE

Copyright in all books and other publications by Norman James Brian Plomley.

Books, pamphlets, serials and other publications and copies thereof, on various topics, including copies of the Settlor's publications.

Various research notes, correspondence files, photographs, film and other objects.

Various pictures, drawings, and other art objects.

SECOND SCHEDULE

MIM Holdings Limited	16,200 shares
James Hardie Asbestos Limited	5,207 shares
Conzinc Riotinto of Australia Limited (CRA)	11,000 shares
Union Carbide Australia and New Zealand Limited	4,725 shares

SIGNED by NORMAN JAMES BRIAN }
 PLOMLEY in the presence of: } N. J. B. PLOMLEY
 C. TASSELL

THE COMMON SEAL of THE MAYOR }
 ALDERMEN AND CITIZENS OF THE } (L.S.)
 CITY OF LAUNCESTON was hereunto }
 affixed in the presence of: }
 J. D. YAXLEY
 Town Clerk.

SCHEDULE 2 Preamble, paragraph IX
and section 5

PROPERTY OF THE INCOME TRUST

The following property, namely:—

- (a) 7 952 shares in Broken Hill Proprietary Limited together with rights to a new issue of shares;
- (b) 77 196 shares in Commonwealth Industrial Gases Limited;
- (c) 23 875 shares in Castlemaine Tooheys Limited;
- (d) an amount of \$43 308·08 held by the Income Trustee,

together with any legal or equitable estate or interest in any other property, whether present or future and whether vested or contingent, and any entitlement, power, or privilege, if that estate, interest, entitlement, power, or privilege arises from the administration of the trusts arising from the Income Trust, and whether it so arises before, on, or after 12th November 1984.

SCHEDULE 3 Preamble, paragraph IX
and section 5

PROPERTY OF THE RESEARCH TRUST

The following property, namely:—

- (a) the books, periodicals, manuscripts, and other documents kept at the State Library of Tasmania and known as the "Tasmanian Aboriginal Collection";

- (b) the beneficial interest in inscribed stock for \$20 000 issued by the Hydro-Electric Commission in respect of Loan No. 419 and accrued interest;
- (c) an amount of \$41 404.15 and accrued interest standing to the credit of savings account No. 1403-5558 at the Savings Bank of Tasmania,

together with any legal or equitable estate or interest in any other property, whether present or future and whether vested or contingent, and any entitlement, power, or privilege, if that estate, interest, entitlement, power, or privilege arises from the administration of the trusts arising from the Income Trust or the Research Trust, and whether it so arises before, on, or after 12th November 1984.