



## Treasurer; Attorney General

Our Ref: 35-20097  
Your Ref: Petition 149

Hon Brian Ellis MLC  
Chair  
Standing Committee on Environment and Public Affairs  
Parliament House  
PERTH WA 6000

Dear Mr Ellis *Brian*

### PETITION NO 149-WAJARRI PEOPLES TRUST

I refer to your letter dated 13 April 2012 in which you have requested my comments on the terms of the petition and the submission from the principal petitioner. My comments are set out below:

#### *Comments on the petition*

##### *(i) Removal of trustees*

The provisions of a deed establishing a charitable trust may make provision for the removal of trustees.

The removal of trustees in relation to the Wajarrri People's Trust ("the Trust") is governed by clauses 5.4 and 5.5 of the Trust Deed. The Advisory Committee may terminate the appointment of a person as Trustee and appoint another person in his or her place by a three quarter majority decision of all Advisory Committee members.

The Attorney General does not have any power to order the removal of a Trustee of a charitable trust under the *Charitable Trusts Act 1967* (WA) ("the Act"). In Part IV of the Act, powers are conferred on the Attorney General in relation to inquiring into, or taking proceedings to enforce, charitable trusts. A copy of Part IV of the Act is Attachment 1. Part IV of the Act reflects the role of the Crown as guardian of charitable trusts.<sup>1</sup>

The Supreme Court has inherent jurisdiction to remove or replace a trustee for the purpose of ensuring that trusts are properly executed. That jurisdiction "is exercised with a view to the interests of the beneficiaries, to the security of the trust property and to an efficient and satisfactory execution of the trusts and a faithful and sound exercise of the powers conferred upon the trustee".<sup>2</sup>

<sup>1</sup> Gino Dal Pont *Law of Charity* (Lexisnexis Butterworths 2010) at [14.24]; See also *Islamic Association of Wanneroo (Inc) v. Al Hidayah Mosque (Inc) (No.2)* [2009] WASC 404 at [58] per Murphy J.

<sup>2</sup> *Miller v. Cameron* (1936) 54 CLR 572 at 580-581 per Dixon J.

The Supreme Court also has a statutory jurisdiction under section 77 of the *Trustees Act 1962 (WA)* ("the Trustees Act") to appoint a new trustee or trustees in substitution for, or in addition to, any existing trustee or trustees. An order under the Trustees Act may be made "whenever it is expedient to appoint a new trustee or new trustees, and it is inexpedient, difficult or impracticable so to do without the assistance of the Court." Applications for an order for the appointment of a new trustee may be made by any person beneficially interested in the property or on the application of any person duly appointed trustee of the property or intended to be so appointed.<sup>3</sup>

***(ii) Restructure of Advisory Committee***

The structure of the Advisory Committee is also governed by the Trust Deed. An initial Advisory Committee with specified members was established under clause 9.2 of the Trust Deed. Members of the Advisory Committee hold their positions until they resign or are otherwise unable to perform their functions for a specified time period and their position is then filled by a person chosen by the other Advisory Committee members.

Clause 14.2 of the Trust Deed itself provides for variation of the Trust Deed.

The Attorney General may approve schemes for the variation of charitable trusts under Part III of the Act on the application of the trustee(s) of the charitable trust but only in the limited circumstances set out in ss.7, 7A, 7B and 8 of the Act. Section 7 of the Act applies where application is made for property to be disposed of for other charitable purposes. Section 7A of the Act applies where application is made for small trusts to be terminated. Section 7B of the Act applies where application is made for property or income held on trust to be combined. Section 8 of the Act applies where application is made for to extend or vary the powers of trustees or to prescribe or vary the mode of administering the trust. In each case, schemes for the variation of the charitable trust are prepared by the trustee(s) of the charitable trust.

***(iii) General comments***

If the petitioners wish to seek the removal of the Trustee from the Trust then it is open to them to approach a member of the Advisory Committee. Alternatively, in an appropriate case, a person could invoke the jurisdiction of the Supreme Court for the appointment of a new trustee in circumstances where the preconditions to the exercise of the court's inherent or statutory jurisdiction could be substantiated.

If the petitioners wish for a new Advisory Committee structure then it is open to them to approach a member of the Advisory Committee or the Trustee with a view to seeking amendment of the Trust Deed.

***Comments on the submission***

On 1 July 2010 Kott Gunning wrote to me regarding the Trust. Kott Gunning requested that I exercise my powers under section 20 of the Act in order to investigate the administration and management of the Trust.

Following receipt of that letter, I arranged for the State Solicitor's Office to review certain matters relating to the operation and management of the Wajarri People's Trust, including the allegations and complaints brought to my attention by Kott Gunning. In the course of that review, Kott Gunning sent a copy of Mr Jones' statutory declaration to the State Solicitor's Office.

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<sup>3</sup> Section 93 of the Trustees Act.