

PARTIES: FLYNN, John, MASSEY, Brian, TREMLETT, Lance, LALARA, Jambana, MAMARIKA, Andy AND WURRAMARA, Andrew As Trustees of the GROOTE EYLANDT ABORIGINAL TRUST

v

MAMARIKA, Peter AND HERBERT, Richard as Representatives of the Umbakumba Community BLITNER, Gerry, LALARA, Jabani, LALARA, Timothy, LALARA, Billy, WURRAMARRBA, Jonothan as Representatives of the Angurugu Community WURUBA WURRAMARA AND MURABUDA WURRAMARRBA as Representatives of the Bickerton Island Community

AND:

THE ATTORNEY-GENERAL FOR THE NORTHERN TERRITORY OF AUSTRALIA

TITLE OF COURT: SUPREME COURT (NT)

JURISDICTION: SUPREME COURT (NT) EXERCISING TERRITORY JURISDICTION

FILE NO: No 132 of 1995

DELIVERED: Darwin 20 March 1996

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JUDGMENT OF: MARTIN CJ.

**CATCHWORDS:**

Aboriginals - Charitable trust - Application to the court for advice and authority on whether specific grants of the trust funds would constitute a charitable purpose - Clan grants - Medical grants - Funeral grants - Church grants - Old aged/pensioner and handicapped grants - Homeland grants - Education grants - Sport and recreation grants - Anindilyakwa Land Council grants - Power and Water Authority grants - Festival grants - Ceremony grants - Angarrumanja grants - Loan to members of the community -

Trusts and Trustees - Application to the court for advice and authority - Charitable trust - Execution of charitable trusts - Trust funds to be applied for charitable purposes for the benefit of the community as a whole - Charitable purposes - Strict legal sense.

Trusts and Trustees - Duties of trustees - Execution of trust - Powers of delegation limited - Duty to exercise the care of a prudent man of business in the appointment and supervision of a delegate - Obligation to be diligent in ensuring proper performance of duties given to an agent.

Statute of Queen Elizabeth 1601 (IMP) Preamble.  
Aboriginal Land Rights (Northern Territory) Act 1976 (CTH) Schedule 1.  
Supreme Court Rules 1994 (NT) r54.02

**REPRESENTATION:**

*Counsel:*

Plaintiff: Mr T Riley QC  
1st Defendant: Mr A Wyvill  
2nd Defendant: Mr C Rowe

*Solicitors:*

Plaintiff: Ward Keller  
1st Defendant: Cridlands  
2nd Defendant: Solicitor for NT

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IN THE SUPREME COURT  
OF THE NORTHERN TERRITORY  
OF AUSTRALIA

No. 132 of 1995

BETWEEN:

JOHN FLYNN, BRYAN MASSEY,  
LANCE TREMLETT, JAMBANA  
LALARA, ANDY MAMARIKA AND  
ANDREW WURRAMARA As Trustees  
of the GROOTE EYLANDT  
ABORIGINAL TRUST  
Plaintiff

AND:

PETER MAMARIKA AND RICHARD  
HERBERT as Representatives of  
the Umbakumba Community GERRY  
BLITNER, JABANI LALARA,  
TIMOTHY LALARA, BILLY LALARA,  
JONOTHAN WURRAMARRBA as  
Representatives of the  
Angurugu Community WURUBA  
WURRAMARA AND MURABUDA  
WURRAMARRBA as Representatives  
of the Bickerton Island  
Community  
First Defendants

AND:

THE ATTORNEY-GENERAL FOR THE  
NORTHERN TERRITORY OF  
AUSTRALIA

CORAM: MARTIN CJ:

REASONS FOR JUDGMENT

(Delivered 20 March 1996)

*Preamble*

In this matter the Court is asked to determine questions arising in the execution of a certain trust. The determinations are very important not only for the plaintiffs, the current trustees, and any who may replace them, but for practically the whole of the aboriginal population of Groote Islandt and Bickerton Island which lie in the Gulf of Carpentaria, not far from the eastern edge of the mainland of the Northern Territory. The Court has been requested to produce, by way of reasons and directions, a document which can be readily referred to and understood by all concerned. Bearing in mind that the law which must be applied is mainly the common law evolved over time in a society quite foreign to that of the aboriginals, and my lack of instruction in concepts in aboriginal society that may have a relationship to the relevant common law, my attempt to meet the wishes of the people, within the constraints of judicial duty, may not be as successful as they may have hoped. However, I have attempted to proceed by way of straight forward statements of the law, and how it ought to be applied in these particular circumstances. I have read all the background material supplied to me by counsel for all parties and considered the many cases and extracts from the standard texts put before the Court in argument by them. I consider that I am relieved of any requirement to analyse and discuss the relevant authorities, since there is no sufficient area of doubt to

warrant it. There is as well a degree of urgency in dealing with this case arising from difficulties within the community pending resolution to the questions which arise, and the need to provide determination of the questions so that the present trustees can set about the application of trust funds which have for many years past supplied a significant source of community sustenance and purchasing power.

*Agreed facts*

The following facts are agreed as between the plaintiffs and the first defendants for the purposes of these proceedings, and are not otherwise reflected in the reasons.

1. Until contact with Europeans the Anindilyakwa-speaking aboriginal people have lived their traditional lifestyle on Groote Eylandt and Bickerton Island since time immemorial. The Anindilyakwa language is the distinctive feature which sets this group apart from other aboriginal people. The tribal groups or clans listed in clause 3 of the Trust Deed dated 7 March 1989 may be accepted for the purposes of these proceedings to contain a complete list of the Anindilyakwa-speaking tribal groups traditionally resident on Groote Eylandt and Bickerton Island and who enjoy native title rights in respect thereof. The members from time to time of these groups are referred to in these applied facts as "the

Beneficiaries". A clan is a grouping of people of common descent and who share spiritual affiliation to a particular area of land (including seas) and have responsibility for the land and sites with special significance on it.

2. On 15 May 1920 Groote Eylandt was gazetted as a reserve for aboriginals under the *Aboriginals Ordinance* 1918.
3. The first significant contract with European people came in 1921 when the Church Missionary Society established a mission at Emerald River on the western side of Groote Eylandt. In 1943 this mission was relocated to Angurugu.
4. In 1946 Church Missionary Society of Australia and Tasmania became the registered proprietor of Mission Lease No. 18 which covered 200 sq miles in the north-western portion of Groote Eylandt.
5. In 1938 Umbakumba was established on the north-eastern tip of Groote Eylandt nearby to the flying boat base operated by Qantas.

6. On 7 November 1963 the Commonwealth of Australia gazetted the revocation of the reservation referred to in para2 above and proclaimed the Arnhem Land Reserve (which included Groote Eylandt) reserved for the use and benefit of wards under s6 of the *Welfare Ordinance* 1953-63.
  
7. In the early 1960s The Broken Hill Proprietary Company Ltd ("BHP") was prospecting for minerals on Groote Eylandt. An agreement dated 7 June 1963 was entered into between BHP and Church Missionary Society Trust Ltd ("CMS") to enable BHP to prospect and apply for mining tenements. By letter dated 13 May 1965 from the Commonwealth Minister for Territories to BHP the understandings reached with BHP concerning BHP's operations at Groote Eylandt and which were not appropriate to be included in the proposed lease instruments were recorded. They included a number of matters relating to the well being of the aboriginal inhabitants. On 21 May 1965 BHP was granted Special Mineral Leases 5, 6 and 9 which it immediately transferred to a subsidiary company Groote Eylandt Mining Company Ltd ("GEMCO"). An agreement dated 17 November 1965 between GEMCO and CMS provided for the use of certain parts of Mission Lease No 18 and the terms upon such land could be used. GEMCO was granted further Special Mineral Leases in 1975 and subsequently.

8. By 1965 GEMCO had begun preparation for mining and shipment of manganese from Groote Eylandt. The manganese mine is established on the western side of Groote Eylandt in close proximity to Angurugu. The town of Alyangula was established to house GEMCO employees and for the development of port facilities.
  
9. Initially CMS paid royalty payments received from GEMCO to an unincorporated association known as Groote Eylandt Trust. On 28 August 1969 Groote Eylandt Aboriginal Trust Inc. was incorporated to act as trustee of the Groote Eylandt Aboriginal Trust and has since received all royalty payments on behalf of the trust until the appointment of the present interim trustees on 2 March 1995.
  
10. On 26 January 1977 the *Aboriginal Land Rights (NT) Act* commenced which listed in Schedule 1 the Arnhem Land (Islands) including Groote Eylandt as Aboriginal Land under that Act. The Deed of Grant for Groote Eylandt pursuant to the Act is dated 30 May 1980.

11. The Beneficiaries continue to live at Angurugu, Umbakumba and on Bickerton Island and various outstations on Groote Eylandt. From statistics available it is apparent that:
- (a) There are approximately 1,200 Beneficiaries living on the island.
  - (b) In 1992 infant mortality rates were approximately four times greater for the Beneficiaries in comparison with other Australians.
  - (c) Statistics relating to education and employment demonstrate that the Beneficiaries are at a considerable disadvantage in comparison with other Australians as do those relating to income.
  - (d) The number of Beneficiaries per dwelling in Angurugu was 8.9 compared with less than 3 for other Australians living elsewhere. The houses are not owned by the aboriginal occupiers and there is no government assistance for repairs, maintenance, acquisition of household white goods, appliances or furniture.
  - (e) The disadvantage suffered by the Beneficiaries is reflected in the crime and imprisonment rate.

12. The trustees and the beneficiaries accept that when The Church Missionary Society of Australia, The Church Missionary Society of Australia and Tasmania, the members and office bearers of those organisations and Church Missionary Society Trust Ltd obtained rights under the Mining Ordinance (including any Permit to Enter or Authority to Prospect referred to in the Trust Deed or the agreements with BHP), negotiated with BHP and established the Trust, those organisations, entities and individuals at all times did so for the purpose of assisting the people of Groote Eylandt and Bickerton Island (who were then wards of the State) and not for obtaining any benefits for themselves.

*The Trust Deed*

Pursuant to a Deed having affect from 25 May 1956, Church Missionary Society Trust Limited ("the Settlor") established a trust fund for what were called "Royalty" payments received and to be received by it, and appointed Groote Eylandt Aboriginal Trust Incorporated ("the Trustee") to administer the fund. The fund has been supplemented by further funds in the intervening years and the Trustee has accepted the same as additions to the trust fund.

Recently, the Trustee was removed and the plaintiffs were appointed as trustees of the trust fund. It is anticipated that the Trustee may be restored to the position as trustee of the fund.

The terms of the Deed oblige the trustee (I use that term to cover whosoever fills that role whether one or more than one), to hold and apply the trust fund, including the additional funds accepted as additions to the trust fund:

- exclusively
- for such charitable purposes (in the strict legal sense)
- as may be served by the provision of money, property or other advantages
- for the benefit, welfare and advancement
- for all aboriginal persons who are permanently resident on Groote Eylandt or Bickerton Island
- and who are members of any of twelve clans identified by name in the Deed (para4).

Without limiting those purposes, the purposes of the trust include the use of the trust fund and all other payments and donations for the:

- education
- benefit
- welfare
- comfort, and
- general advancement in life of those aboriginal persons
- in such manner and to such extent and upon such terms and conditions as from time to time may seem expedient to the Trustee (para4(b)).

There are a variety of powers of investment of the funds of the trust conferred by the Deed, including, by way of unsecured loans to a person who is one of the aboriginal persons described (para5(vi)). That power is limited by a requirement that not less than half of all Royalty payments be invested in other forms of prescribed investment.

*The Directions Sought*

The plaintiffs seek directions pursuant to r54.02 of the *Supreme Court Rules* as to:

- "1. Whether the Trustees of the Groote Eylandt Aboriginal Trust ("GEAT") are entitled to make distributions or grants of money to Clan groups or family groups:
  - (a) without the imposition of conditions; and/or
  - (b) supervision by the Trustees as to the expenditure of the money.

2. If the Trustees are required to impose conditions upon, and/or supervise distributions or grants, what:
  - (a) types of conditions are required to be imposed; and
  - (b) level of supervision is required.
3. Whether, and under what conditions, the Trustees of GEAT are entitled to make loans to the objects of the Trust.
4. Which, if any, of the following expenditures can be lawfully classified as being of a charitable nature for the purposes of the Groote Eylandt Aboriginal Trust:
  - (a) grants for medical purposes;
  - (b) grants for funeral expenses;
  - (c) grants to the churches;
  - (d) grants for the aged and handicapped;
  - (e) grants for educational purposes;
  - (f) grants for the payment of electricity;
  - (g) grants for sport and recreational purposes;
  - (h) grants for local festivals;
  - (i) unconditional clan grants.
5. What are the principles to be applied by the Trustees in the allocation of Trust funds between the various charitable purposes available pursuant to Clause 4 of the Trust Deed."

These directions are sought bearing in mind an assessment made by the plaintiffs as to the nature of certain payments made by the Trustee of the kind referred to and the manner of payment of them. The Trustee is not a party to these proceedings, and whether the payments for the purposes suggested

were made, and whether in the manner suggested, has not been the subject of any determination. However, the Court is satisfied that the trustees are genuinely desirous of obtaining guidance as to those matters for their own purposes and because questions of a like nature have arisen amongst the aboriginal persons referred to in the Trust Deed.

#### *Construction of the Trust Deed*

Most of the cases to which the Court was referred deal with the question of whether a particular bequest or settlement created a charitable trust. Here there can be no doubt about that. What is in question is the purposes for which the trust fund may be applied so as not to breach the duty of the trustee to apply them for charitable purposes.

The trust is a charitable trust. The express words at para4 of the Deed make it so. What are charitable purposes are to be decided in the strict legal sense, as opposed to popular notions of what may be a charity or of a charitable nature. Guidance as to what may properly be regarded as charitable purposes may be gleaned from the preamble to the famous 1601 Statute of Queen Elizabeth I and the indications contained therein. Reported cases may afford a guide by way of analogy. For the most part it is a matter of judgment. As a great many of the purposes referred to in the preamble of the Statute are not

relevant in this case, I will not trouble to set them out in full.

In current usage, a charitable trust, in the strict legal sense, is one for:

- The relief of poverty. This is not confined to relief of destitution by providing the necessities of life. It relates as well to the relieving of distress caused by lack of money, that is, of those who would otherwise go short or without. Regard should be had to an acceptable minimum standard of living that is appropriate to the community. Gifts of cash to those in poverty to relieve need and distress fall within the purpose, unless it is shown that it does not have that effect.
- Advancement of education. This is commonly regarded as the process by which persons, usually children and young adults, develop or have developed their intellectual, emotional, spiritual and physical powers and so become full participating and productive members of the community.

- Advancement of religion. This includes the maintenance and spread of religious doctrine, the provision of facilities for worship and the support of persons who conduct worship or propagate religious teachings. A gift to a church is prima facie charitable, but must be exclusively for a charitable purpose and not include any non-charitable purpose.
- Other purposes beneficial to the community and not falling into any of those particular categories. These may relevantly include the following:

*Relief of the disabled* through whatever cause and including action directed to the cure of alcoholism and drug addicts.

*Relief of the aged* involving the application of funds for the relief of disabilities associated with the aged, whether in poverty or not.

*Advancement of aboriginal culture* involving the preservation, advancement and maintenance of traditional aboriginal culture (including spiritual beliefs) and way of life of the community. It may be that this category is subsumed in or analogous to some

other or others of the recognised categories, but in this case it is necessary to make it plain that having taken into account all the information before me, it assumes a distinct charitable purpose on its own account.

Charitable trusts exist for the benefit of the public or a section of the public as understood in accordance with the law. The section of the public defined in the Trust Deed, being the aboriginal persons referred to, is a section of the public for these purposes. (That section of the public is referred to as "the community"). The reference in para4 to the purposes of the trust as including the use of the trust fund for the education, benefit, welfare, comfort and general advancement in life of the community, is subject to the requirement that the trust funds be applied for charitable purposes. The funds are only to be used in such a way as will benefit the community as a whole. Use of the trust funds for the benefit of a particular aboriginal person or persons (falling within the description contained within the Trust Deed), which is not beneficial to the community, will be in breach of the terms of the trust. Those particular enumerated purposes do not extend or override the primary and only purposes of the trust, that is, charitable purposes; they are examples of the way in which the trust funds might be used, provided always that every such use of those funds

falls within what is a charitable purpose in the strict legal sense.

#### *Duties of a Trustee*

The principle duties of a trustee in this case are:

1. To acquaint himself with the terms of the trust deed.
2. To execute the trust in accordance with its terms and the general law so as to benefit the community. In the course of doing so it is permissible that members of the community share in the benefits through effect being given to a purpose to which the trust is directed.
3. To protect the trust property.
4. To exercise discretionary power in good faith, upon real and genuine consideration and in accordance with the purpose for which the discretion was conferred.

5. Not to delegate any of the trustees powers or discretions to any person unless in accordance with the provisions of the trust Deed.
  
6. Not to invest the trust funds in any manner which is not authorised by the trust Deed or statute.
  
7. Not to deal with the trust property for his own benefit, or otherwise to profit from the trust.

There are numerous provisions in the Trust Deed and in the general law relating to the powers, discretions and duties of trustees. The Trust Deed contains provisions regarding liability of the trustee for errors, forgetfulness, breach of duty or trust and arising from the exercise of discretions. These directions are given without regard to the possible application of those provisions.

#### *Execution of the trust*

It is fundamental to the concept of a charitable trust that it be for a purpose not a person, and that must be kept steadily in mind by the trustee at all times. It would be a breach of trust for any of the trust funds to be paid to any

person or persons within the community having the only affect of increasing the property of that person or persons. It is inconsistent with the notion of a charitable trust that payment be made out of the trust fund to a person for no reason other than that he or she is one of the community for whose benefit the trust was established. Any such payment must be for a charitable purpose, for the benefit of the community, not just the person who receives the money. For the same reasons, the trustee would be failing in a duty to properly discharge the obligations placed upon them by the Trust Deed if they simply paid money to a person who intended to distribute it, or a portion of it, amongst other members of the community for no charitable purpose. Payment of money to a person, either directly or through another, without the object of achieving a charitable purpose would be a breach of the trust. Conferring a benefit on an individual or individuals within the community by providing money out of the trust funds for any use to which that individual or individuals may think fit to use it, is not to apply the funds for a charitable purpose.

### *Delegation*

The trustee is responsible for deciding:

- \* what payments are to be made out of the trust fund
- \* for what charitable purpose they are to be made

- \* by what means and to whom the funds are to be paid for that purpose.

There are limited powers of delegation contained within the Trust Deed as follows:

- "9. The Trustee shall not be bound in any case to act personally but shall be at full liberty to employ any agents, consultants, advisors, servants or other persons whatsoever to transact all or any business of whatever nature required to be done in the premises including the receipt and payment of money; and the Trustees shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.
- 10. The Trustees if at any time they are more than one shall act jointly but they may in writing delegate to any person or persons (including any Trustee) the exercise of all or any of the power or discretionary authorities hereby conferred on the Trustees, and may execute any powers of attorney or other instruments necessary to effectuate such purpose.
- 11. The Trustee may delegate to committees of three or more persons (at least one of whom shall be a member of its Committee of Management), who shall have power to regulate and control their own proceedings some or all of its powers, discretions and authorities but who shall be at all times under the control of the Trustee and whose appointment may at any time be terminated by the Trustee. Such Committees shall keep minutes of all decisions."

At common law the general rule is that a trustee must not delegate his duties or powers, not even to his co-trustees, but the delegation is allowed where it is specifically permitted by the trust instrument or by statute.

Paragraph 9 of the Trust Deed is limited to the appointment by the Trustee of agents to do ministerial acts. It is only that body, acting as trustee, which may exercise the powers contained in parall which relate to the delegation of powers, discretions and authorities. Para10 applies where there is more than one trustee, such as the plaintiffs.

In the case of an appointment of an agent to perform an act, as opposed to exercising a discretion, the trustee must act in conformity with common usage and as prudently as if acting for himself, and provided further that the agent is employed in a matter which is within the ordinary scope of the agent's business to perform. A trustee is under an obligation to be diligent in seeing that a duty given to an agent has been properly performed. There are provisions in the *Trustee Act* granting power to trustees to appoint bankers and solicitors as agents for particular purposes.

The express provisions in the trust deed authorising the delegation of the exercise of discretionary powers does not relieve the trustee of the duty of exercising the care of a prudent man of business in the appointment and in the supervision of the delegate.

Whilst dealing with this question of delegation and agency, although it does not strictly arise in these proceedings, it is nevertheless convenient to mention the possibility that the payment of trust funds to a person for other than charitable purposes may result in that person being responsible to the community. Where an agent, with notice of a trust, deals with trust money or property coming into his hands in a manner or for purposes inconsistent with the trust, or is otherwise a party to the commission of a breach of trust, he is liable to the beneficiary in respect of money or property so dealt with, or for such breach of trust.

*Information on which directions are sought*

I turn now to set out the information forming the basis upon which the trustees seek directions and my directions thereon:

*Clan Grants* There are thus far identified 88 family groups from the community which belong to the original 13 clans identified in the Trust Deed. There may be other groups to be similarly identified. The directions sought go to the question of payments which might be made to those groups as such, without regard to the purposes of the trust. Payments might be made to an individual on behalf of the group for distribution amongst the members of the group, including

that individual, and within the unfettered discretion of that individual.

*Directions*

Any grants made under this scheme of things would not be for charitable purposes. The powers to appoint agents to act may be employed, for example, for the distribution of funds in accordance with a discretion exercised by the trustee, including as to the application of the funds and the recipient. There is power to delegate the exercise of discretions. In either of these cases the provisions of the Trust Deed must be strictly adhered to. It might be of assistance to the trustee if it received an application from a responsible person representing a particular group detailing the charitable purposes for which funds are sought from time to time where the proposed direct recipient of the benefit is a member of the group. It would be open to the trustee in the exercise of discretion, taking into account other claims on the fund, to pay such portion of the trust funds as it determines to that person on his or her undertaking to distribute it in accordance with the charitable purposes approved by the trustee. Any such agent or

delegate must be accountable to the trustee who must exercise diligent supervision over him or her.

*Medical grants* are proposed to provide patients and their escorts with transport to and from appropriate medical establishments. A payment of approximately \$100.00 for sundry expenses and the accommodation of both the escort and the patient for the length of the stay away from Groote Eylandt might be made.

*Directions*

The relief of the disabled is a charitable purpose.

*Funeral grants* are proposed following upon the death of a beneficiary of the trust. It is intended to provide a grant to the community so that the required ceremonial elders, relatives, coffin and flowers can be flown to Groote Eylandt. Certain Aboriginal ceremonies are required to be performed upon receipt of the coffin. Most of the flights must be taken with small air charter companies. It is usual for food to be provided to visitors at the funeral. The amount of these grants may vary depending on the importance of the deceased, the funds available in budget at that time and the cost of required services. It would be usual for an upper limit of \$10,000 to be applied for any one funeral grant.

*Directions*

The disposal of the dead is a purpose beneficial to the community. Public ceremonies associated with funerals are often regarded as being such a benefit, and that may be particularly so in a relatively small section of the public, such as the community. The maintenance of aboriginal traditional practices and custom in regard to burial of the dead is also a benefit to the community.

*Church grants* are proposed to be provided to each of the local community churches at Angurugu and Umbakumba to assist church elders in organising church activities. Such a grant would be unconditional, to be used at the discretion of the elders of the church.

*Directions*

These may be charitable if falling within the considerations relating to the advancement of religion. A grant to church elders to dispose of as they see fit would not.

*Old aged/pensioner and handicapped grants* are proposed to be made upon application from people of the community who require assistance and who are either elderly or handicapped. Monies may be required to assist in purchase of wheelchairs, accommodation for handicapped members of the community living in special care centres in Darwin and to provide a vehicle to transport handicapped members of the community between their respective homes and health care facilities on Groote Eylandt. Old aged grants may be given to elderly members of the community at the discretion of the trustee.

*Directions*

Provided these grants are for the relief of the disabilities of age and handicap, they would be charitable. A grant to an aged or handicapped person simply because he or she was aged or handicapped would not.

*Homeland grants* are proposed to support the continued operation of the setting up of outstations. People on outstations live away from the main residential centres and may use the money provided to purchase vehicles to move between the outstation and the centres.

*Directions*

These would be charitable if made for the benefit of the community. The provision of funds to individuals in poor circumstances for shelter, amenities and other necessities of life appropriate to the standards of the community, including means of transport, might be seen as being in relief of poverty. There may be elements of the advancement of education and religion, as well as other charitable purposes being served.

*Education grants* are proposed to be used to assist children travelling to and from school on the mainland and to provide the children with pocket money. Adult education may be supported by payment for the purposes of transport to and from educational centres to attend sundry courses, accommodation, books, fees and pocket money. These grants would not be made where the courses are supported by government or the educational institution.

*Directions*

Education grants are for charitable purposes as being for the advancement of education and may be as well for the relief of poverty.

*Sport and recreation grants* are proposed to be provided to the Sport and Recreation Officers at the Angurugu and Umbakumba Community Government Councils for the purpose of supporting sporting activities. Some sport and recreation grants may be made directly to individuals or sporting teams to enable travel to events which are off Groote Islandt and Bickerton Island, including out of the Northern Territory.

*Directions*

If the promotion of sport and recreation is for the benefit of the community it may be for a charitable purpose. They may be regarded as for the advancement of education, particularly physical education or the enhancement of physical proficiency and efficiency. For a member of the community, the ability to visit other places may be an important aspect in the advancement of education. The enhancement of physical well being could be for a charitable purpose.

*Anindilyakwa Land Council grants* are proposed to provide funds to enable that organisation to support various projects under its control. It is a Council incorporated pursuant to the provisions of the *Aboriginal Land Rights (Northern Territory)* Act. The projects may include a program which is designed to assist officers to protect the

environment. The Council also assists people who are undertaking sea management studies in the Groote Eylandt area.

*Directions*

These grants may be seen as for the benefit of the community by providing funds to employ members of the community and thus for the relief of poverty, and perhaps for the advancement of education and enhancement of the natural environment, all charitable purposes.

*Power and Water Authority grants* are proposed to be made to pay for charges for electricity to households occupied by members of the community. Payments may be made in conjunction with local community government councils which are initially responsible for the collection of funds to meet electricity accounts. Until recently all electricity costs were met by government.

*Directions*

Power and Water Authority grants may be charitable if for the relief of poverty.

*Festival grants* are proposed to support activities necessary to meet aboriginal traditional obligations. Those grants may be made to support various festivals on Groote Islandt for the benefit of members of the community. Support may be given by providing money towards food and the cost of chartering aircraft to fly people to the festival. Festival grants would only be made where they provide support to the community in general.

*Directions*

Festival grants may be charitable if for the advancement of education or religion or perhaps aboriginal culture.

*Ceremony grants* are proposed to be given to enable aboriginal elders within the community to perform ceremonies which are culturally necessary, including house smoking and clearing a place of a curse. The amount of these grants may be dependent upon what the responsible elder wishes to charge to perform the ceremony.

*Directions*

Ceremony grants may be charitable if being for the advancement of religion or aboriginal culture. The

payment of reasonable fees for services is not contrary to the notion of a charitable purpose.

*Angarrumanja grants.* It is proposed that these grants be used to provide travel, accommodation, treatment, training and support to members of the community affected by substance abuse and to provide emergency assistance to victims of family violence, to purchase capital items not provided by government funding, and to provide money for food required in cases of emergency.

*Directions*

Angarrumanja grants may be charitable being for the relief of the disabled.

*Loans to members of the community.* It is proposed that loans be made to members of the community for a variety of purposes, but normally to be associated with some form of commercial enterprise which may carry varying degrees of risk. It is proposed that the terms of the loan be tailored to individual circumstances, including as to the charging of interest, the rate of interest and the terms of repayment.

*Directions*

No distinction is made as to the purpose of the proposed loans. If it is intended that they be for commercial purposes, that is, that the borrower shall be entitled to use the funds for his or her own benefit, then it falls to be considered under the investment powers and the general duties of a trustee. There is a power to make unsecured loans to members of the community conferred by the Deed. The power to make such advances was no doubt thought desirable so that members of the community might be assisted in providing for their personal, or business needs. There are no interests in land vested in any member of the community on the islands, and thus the usual means of supplying security over land is not available to them. Whether the purpose of any proposed loan would provide anything tangible to serve by way of security depends on each case. The power does not extend to the making of loans without regard to the duty to protect the trust funds. Further, the power does not necessarily extend to the making of loans on terms more advantageous to the borrower as a member of the community than such as would be extended to a person who is not a member of the community (if the power existed) whether as to interest or terms of repayment. The trustees should exercise the same diligence and prudence as an ordinary

prudent man of business would exercise in conducting his own business when considering the making of any such loan. This means that if no security is available the trustee should most carefully consider the purpose to which the loan is to be put, see that it is applied in that manner, take into account the ability of the borrower to repay the loan and other considerations going to the assessment of his or her creditworthiness. To the extent that monies are lost as a result of bad investments under this heading, they are lost to the purposes of the trust, and thus to the benefit of the community.

The trust funds may be used for charitable purposes "in such manner and to such extent and upon such terms and conditions as from time to time may seem expedient" (para4(b)). They may accordingly be applied by way of loan to a member of the community for charitable purposes. Since the funds can be given there is no reason why they may not be lent, but the same considerations apply as to a gift. It may be that the charitable purpose can be achieved by the provision of funds for a limited time. The opportunity to recover the funds lent is to the benefit of the fund and ultimately the community. If funds are lent, there is an obligation to enforce the terms of the loan, and so

that proper accounts are kept overdue loans should be properly supervised and reviewed and if necessary written off in accordance with proper accounting standards.

The directions in each case are deliberately couched in general language. That is because the information available is general. It is up to the trustee to consider each proposal for the grant of trust funds on its own merits.

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