

LAWS OF FIJI

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CHAPTER 67

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CHARITABLE TRUSTS

Ordinances Nos. 18 of 1945, 15 of 1965

AN ACT TO PROVIDE FOR THE INCORPORATION OF THE TRUSTEES OF CHARITABLE AND OTHER TRUSTS, FOR THE EXTENSION OF CHARITABLE TRUSTS, AND FOR OTHER PURPOSES CONNECTED THEREWITH

[7th September, 1945]

PART I-PRELIMINARY

Short title

1. This Act may be cited as the Charitable Trusts Act.

Interpretation

2. In this Act, unless the context otherwise requires-

"charitable purpose" includes any of the following purposes, that is to say:-

- (a) the supply of the physical wants of sick, aged, destitute, poor, or helpless persons, or of the expenses of funerals of poor persons;
- (b) the education (physical, mental, technical, or social) of the children of the poor or indigent;
- (c) the reformation of criminals, prostitutes, or drunkards;
- (d) the employment and care of discharged criminals;
- (e) the provision of religious instruction, either general or denominational, for the people;
- (f) the support of libraries, reading-rooms, lectures, and classes for the instruction of the people;
- (g) the promotion of athletic sports and wholesome recreations and

amusements of the people;

(h) encouragement of skill, industry, and frugality;

(i) rewards for acts of courage and self-sacrifice;

(j) the erection, laying-out, maintenance, or repair of buildings and places for the furtherance of any of the purposes herein mentioned;

(k) such other purpose as may be declared by the Minister to be a charitable purpose;

"Registrar" means the Registrar of Titles;

"trustees" includes executors or administrators, and any person or persons, body corporate, or association in whom any property is vested for religious, educational, literary, scientific or charitable purposes.

PART II-INCORPORATION OF TRUST BOARDS

Incorporation of trust boards

3. It shall be lawful for the trustees or trustee for the time being of any charity for religious, educational, literary, scientific, or charitable purposes, to apply to the Registrar for a certificate of registration of the trustees of any such charity as a corporate body; and if the Registrar having regard to the extent, nature and objects, and other circumstances of the charity, shall consider such incorporation expedient, he may grant such certificate accordingly, subject to such conditions or directions as he shall think fit to insert in such certificate relating to the qualification and number of trustees, their tenure or avoidance of office, the mode of appointing new trustees, and the custody and use of the common seal; and thereupon the said society or trustees shall become a body corporate under the name set forth in the certificate.

Application for incorporation

4. Every application to the Registrar for a certificate under the provisions of this Act shall be in writing, signed by the person or persons making the same, and shall contain the several particulars specified in the First Schedule, or such of them as shall be applicable to the case. The Registrar may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as he may think necessary or proper.

Nomination of trustees and filling up vacancies

5. Before a certificate of incorporation is granted, trustees of the charity shall be effectually appointed to the satisfaction of the Registrar; and, where a certificate of incorporation has been granted, vacancies in the number of the trustees of such charity shall from time to time be filled up so far as shall be required by the constitution or settlement of the charity, or by

any such conditions or directions as aforesaid, by such legal means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid; and the appointment of every new trustee shall be certified by or by the direction of the trustees to the Registrar within one month of such appointment.

Certificate of incorporation

6.-(1) A certificate in the form in the Second Schedule purporting to be signed by the Registrar shall be conclusive evidence in all courts that the trustees therein named (hereinafter called the board of trustees) has been duly incorporated, and of the date of such incorporation. The Registrar shall not issue a certificate when the name of the proposed board of trustees, in his opinion, resembles too closely the name of any existing board of trustees.

(2) The original certificate of incorporation shall be kept exhibited in a conspicuous position at the registered office of the board of trustees.

(Inserted by 15 of 1965, s. 2.)

Registered office

7. Every board of trustees incorporated under the provisions of this Act shall have a registered office and shall notify the Registrar of the address thereof. It may from time to time change its registered office by filing in the office of the Registrar a notice under its seal intimating the change and the new address. Any notice or legal process shall be deemed to be served upon the board if left at its registered office.

Powers of the board

8. Every board of trustees incorporated under the provisions of this Act shall have perpetual succession and a common seal, and may hold real and personal property of whatsoever nature, sue and be sued in all proceedings civil or criminal, and do and suffer to be done all that corporate bodies may do and suffer to be done.

Vesting of property

9. All property, whether real or personal, held by the trustees of any such trust, shall immediately upon their incorporation be deemed to be vested in the board of trustees upon and subject to the same trusts, powers, contracts, and equities as then affect the same.

Deeds and contracts

10. Deeds may be made by any board of trustees under its common seal, attested by the trustees or any three of the trustees for the time being constituting the board of trustees; and all other contracts may be made in writing, signed by any person in the name and on behalf of the board of trustees acting under a resolution in writing passed at a meeting of the board of trustees.

Acts prima facie valid

11. All acts or deeds done or made by any person acting bona fide as such trustee shall be valid notwithstanding any defect that may afterwards be found in his appointment, and the signature of any person purporting to act as such trustee shall be prima facie evidence of his being such trustee.

Board may deal with its property

12. Any board of trustees (notwithstanding any trusts that may affect its property) may dedicate all or any of its property for any public purpose or may sell or exchange the same upon such terms as it deems expedient, and any money or lands that are received in pursuance of any such sale, exchange, or dedication shall be held or invested on the same trusts as affect the lands so dealt with.

Cancellation of incorporation of board of trustees

13.-(1) If in the opinion of the Registrar-

- (a) the incorporation of a charitable trust was obtained by fraud misrepresentation or mistake; or
- (b) any of the objects of a charitable trust has become unlawful; or
- (c) a charitable trust has been or is being used for any unlawful purpose; or
- (d) the board of trustees of a charitable trust is not functioning or has become dissolved; or
- (e) the board of trustees of a charitable trust is not, by reason of the state of its affairs, able properly to exercise its functions or any of them,

he may serve notice in writing upon the board of trustees of such charitable trust, if the identities of the trustees are known, and, in any event, publish a notice once in the Gazette and once in a newspaper published and circulating in Fiji, requiring the trustees to show cause, within thirty days of the date of publication of such notice in the Gazette, why the incorporation of the board of trustees should not be cancelled and if within such period of thirty days the trustees fail to satisfy the Registrar that the incorporation of the board of trustees should not be cancelled the Registrar may, by notice in the Gazette, cancel such incorporation.

(2) Upon the cancellation of the incorporation of a board of trustees such board of trustees shall cease to exist as a corporate body but without prejudice to any liability incurred by such board or its assets whether such liability is incurred before or after the date of such cancellation.

(3) Upon the cancellation of the incorporation of a board of trustees, any person who last held the office of trustee shall, within fourteen days of demand made upon him by the Registrar, transmit to the Registrar, the certificate of incorporation issued to the board of trustees.

(4) If any person shall fail to comply with the demand of the Registrar given in accordance with the provisions of subsection (3) he shall be guilty of an offence and liable to a fine not exceeding fifty dollars.

(Inserted by 15 of 1965, s. 3.)

Appeal from decision of Registrar

14. Notwithstanding the cancellation of the incorporation of any board of trustees under the provisions of section 13 any member of such board may, within thirty days of the notification of such cancellation in the Gazette, appeal to the Supreme Court against the decision of the Registrar and the Supreme Court may confirm or set aside such cancellation or make such other order as in the circumstances seems just and equitable.

(Inserted by 15 of 1965, s. 3.)

Action may be taken under Part III

15. Where the incorporation of a board of trustees has been cancelled under the provisions of section 13 the Registrar, the board or any trustee or any person who has contributed to the funds of the trust may, notwithstanding such cancellation, take action under the provisions of section 17 and thereupon the provisions of Part III shall mutatis mutandis apply.

(Inserted by 15 of 1965, s. 3.)

PART III-EXTENSION OF CHARITABLE TRUSTS

*Property held for certain charitable purposes may be disposed of
for other charitable purposes*

16. In any case where it becomes impossible or impracticable to carry out the trusts upon which any property held for particular purposes of a charitable nature is held, or the amount available proves inadequate to carry out the original charitable purpose, or such purpose has been already effected, or such purpose is illegal or uncertain, then the property so held or any part or residue thereof may be disposed of for some other charitable purpose, or a combination of such purposes, in the manner and subject to the provisions hereinafter contained.

Trustees may prepare a scheme

17. Where the trustees of any such property are desirous that the same shall be dealt with subject to the provisions of this Part, they may prepare or cause to be prepared a scheme for the disposition of the property in accordance with the provisions of this Part.

Scheme to be laid before Attorney-General

18. Every scheme prepared under the provisions of this Part shall be submitted to the Attorney-General, together with full information of all the facts upon which it is proposed to make such disposition, and with copies of any instruments necessary to explain the scheme so prepared; and the Attorney-General shall in respect of every such scheme have the powers

and duties hereinafter mentioned-

(a) he may remit the proposed scheme to the trustees for amendment if he considers that it will not properly carry out the objects contemplated, and in so doing shall state in writing the objections which he entertains to the scheme as proposed;

(b) he may report on the scheme submitted, and such report shall be laid before a judge of the Supreme Court under the provisions of this Part, or he may decline to make any such report, and allow the scheme to be laid before the judge to be dealt with as hereinafter provided;

(c) every report by the Attorney-General on any such scheme, and such scheme, with or without any such report, shall be filed in the office of the Registrar, and such report and scheme, or the scheme alone if there is no report, shall be open to inspection by the public without any fee or charge.

Notice of reference to Supreme Court to be gazetted

19. Notice of the reference to the Supreme Court of any scheme shall be published once in the Gazette, and twice in each week in one newspaper circulating in Fiji for three weeks before such scheme shall be considered by the Supreme Court.

Judge of the Supreme Court to have jurisdiction

20. A judge of the Supreme Court shall have jurisdiction and authority to hear and determine all matters relating to such scheme, and all proceedings therein shall be had in a summary manner, and the judge may decide what persons shall be heard before him in support of or in opposition to the scheme.

Judge, if satisfied, shall make order; otherwise may refuse

21. If the judge is satisfied that a scheme proposed is proper and not contrary to law, public policy, or good morals, he shall make an order approving of the scheme, with any modification or variation he thinks fit; but if he is satisfied that such scheme is not proper or is contrary to law, public policy, or good morals, and is not capable of amendment, he shall refuse to make any order in respect thereof.

Judge may adopt Attorney-General's report

22. Where the Attorney-General has made a report on a scheme submitted to him as aforesaid, the judge before whom the same is laid may adopt such report, and make order thereon accordingly.

Order filed

23. Every order made by a judge under the provisions of this Part shall be filed with the Registrar.

No fee payable

24. No fee shall be payable to the Registrar or to the Supreme Court in respect of any report, scheme, order, inspection, or other proceeding filed or made under the provisions of this Part.

Order of judge to be gazetted

25. Notice that a judge has made an order in respect of any scheme submitted as aforesaid, or has refused to make any such order, shall be published in the Gazette by the Registrar and in the case of a refusal to make any such order, shall contain a statement of the grounds for such refusal.

Scheme may be varied or altered

26. Every scheme adopted as aforesaid may from time to time be varied or altered, and the provisions of this Part relating to the adjustment of a scheme shall, mutatis mutandis, apply to any variation or alteration of such scheme, whether as originally adjusted or as varied or altered.

Scheme may provide for payment of expenses

27. The trustees may provide in their scheme that all reasonable expenses of preparing a scheme to be submitted to the Attorney-General for report under the provisions of this Part, or that may be laid before a judge of the Supreme Court as aforesaid, shall be paid out of or be a charge on the property affected.

Trustees to transfer property in accordance with scheme

28. -(1) The trustees in whom any property is vested with respect to which a scheme has been approved by a judge under the provisions of this Act shall convey, transfer, or pay over the same, with all profits or interest which may have accrued thereon, to the institution, body, or person designated to hold or receive the same under such scheme, and upon so doing shall no longer be liable in respect of any express or implied trust upon which they held such property, except for wilful negligence or misappropriation thereof.

(2) Such trustees may execute all instruments and do all acts necessary for giving effect to this section.

PART IV-MISCELLANEOUS

Inspection of records

29. Subject to such conditions as may be imposed by the Registrar and on payment of the prescribed fee, any member of the public may inspect the records held by the Registrar under the provisions of this Act for the purpose of ascertaining whether or not trustees have been registered, the names of the trustees and the address of the registered office of the trust.

(Inserted by 15 of 1965, s. 4.)

Fees

30. There shall be paid to the Registrar, in respect of the several matters' mentioned in the Third Schedule the several fees therein specified.

(Inserted by 15 of 1965, s. 4.)

Application of Act

31. Nothing in this Act shall affect the operation of the Religious Bodies Registration Act and the provisions of this Act shall not apply to any religious body registered under such Act.

(Cap. 68.)

FIRST SCHEDULE

(Section 4)

We hereby apply to be incorporated under the provisions of the Charitable Trusts Act.

(1) The name of the Board is the Trust Board (Incorporated). / Society (Incorporated).

(2) The registered office of the Board is at Society

(3) The names, addresses and description of the Trustees are-

- (a)
- (b)
- (c)
- (d)
- (e)

(4) The said Trustees were duly appointed by *(method of appointment)* on the day of 19

(5) The proposed device of the common seal is

(6) The objects of the charity are

(7) Attached hereto is-

(a) a statement of the property, real and personal, which is possessed by or belonging to or held on behalf of the charity;

(b) a certified copy of the deed of settlement, will, or other document constituting the charity, and any regulations made thereunder.

Dated at this day of, 19

Trustee.

Trustee.
Trustee.
Trustee.

SECOND SCHEDULE
(Section 6)

CONDITIONS AND DIRECTIONS

I hereby certify that the Trust Board (Incorporated) Society (Incorporated) is duly incorporated under the provisions of the Charitable Trusts Act, subject to the several conditions and directions endorsed hereon.

Dated at this day of, 19

Registrar of Titles.

THIRD SCHEDULE
(Section 30)

FEEES

(a) On application for a certificate of registration as a corporate body	\$2.00
(b) On grant of a certificate of incorporation as a corporate body	\$1.00
(c) On registration of change of registered office	\$1.00
(d) On inspection of records	\$0.25c

Controlled by Ministry of the Attorney-General

Subsidiary Legislation

SECTION 2-DECLARATION OF CHARITABLE PURPOSE

Notice 30th May, 1950

Declarations by the Governor in Council or by the Minister

The following have been declared to be charitable purposes:

1. The prevention of cruelty to animals and the education and instruction of the people for the furtherance of that end.

1st November, 1967

2. The furtherance of thrift and the improvement of standards of living by education and

advice in matters of self-help.

15th January, 1970

3. Marriage guidance and counselling, the promotion of education and research in marriage guidance and the publication and the dissemination of the results of such promotion.

29th August, 1974

4. The relief of distress caused by any disaster affecting the whole or any part of the community.

Controlled by the Ministry of the Attorney-General
