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THE CHARITABLE TRUSTS ACT 1965

1965, No. 14

An Act to provide for the vesting of property held for a charitable purpose in trustees or their successors, and for the incorporation of charitable trust boards

[31 August 1965]

PART I

PRELIMINARY

1. Short title—This Act may be cited as the Charitable Trusts Act 1965.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Act” includes Ordinance;

“Assistant Registrar” means an Assistant Registrar of Incorporated Societies under the Incorporated Societies Ordinance 1952;

“Board” means any trustees or society incorporated as a Board under Part III of this Act;

“Charitable purpose” means every purpose which is charitable in accordance with the law of Western Samoa; and includes every purpose which is religious or educational whether or not it is charitable in accordance with the law of Western Samoa;

“Court” means the Supreme Court, and includes a Judge of that Court;

“Property” means the real and personal property of every kind; and includes money;

“Registrar” means the Registrar of Incorporated Societies under the Incorporated Societies Ordinance 1952; and includes each Assistant Registrar.

Cf. 1957, No. 18, ss. 2, 6 (N.Z.)

PART II

VESTING OF PROPERTY

3. Property to vest in trustees or their successors—(1) Where any real or personal property has been or is hereafter acquired by or on behalf of any religious denomination, congregation, or society, or any body of persons associated for any charitable purpose, and the conveyance or other assurance of that property has been or is taken to or in favour of trustees to be from time to

time appointed, or any parties named in the conveyance or other assurance, or subject to any trust for any such denomination or congregation or society or body of persons, or for the individuals comprising the same, the conveyance or other assurance shall not only vest the property thereby conveyed or otherwise assured in the parties named therein, but shall also effectually vest the same in their successors in office for the time being and the continuing trustees (if any) jointly, or if there are no such continuing trustees, then in their successors in office for the time being chosen and appointed in the manner provided or referred to in the conveyance or other assurance, or in any separate deed or instrument, declaring the trusts thereof; or if no mode of appointment is therein provided or referred to, or if the power of appointment has lapsed, then in such manner as may be agreed upon by such denomination or by a body constituted to represent them, or by such congregation, society, or body of persons.

(2) The said property shall be so vested without any conveyance or other assurance whatsoever upon the same trusts and with and under and subject to the same powers and provisions as are contained or referred to in the conveyance or other assurance, or in any separate deed or instrument upon which the property is held so far as the same may at the time of vesting be subsisting and still capable of taking effect, anything in the conveyance or other assurance or in any separate deed or instrument to the contrary notwithstanding.

(3) Nothing in this section shall restrict the effect of any appointment of new trustees or of any conveyance or other assurance or vesting of any property.

Cf. 1957, No. 18, s. 3 (N.Z.)

4. Evidence of appointment of trustees—(1) For the purpose of preserving evidence of every appointment of new trustees to which section 3 of this Act applies and of the persons in whom any estate or interest in property from time to time becomes legally vested, every such appointment shall be made to appear by a memorandum under the hand of the chairman for the time being of the meeting at which the appointment was made, and shall be executed either in the presence of that meeting or at any time after that meeting, and attested by 2 or more witnesses.

(2) Any such memorandum may be in the form or to the effect of the First Schedule to this Act, or as near thereto as circumstances will allow, and may be given and shall be received as

evidence in all Courts and proceedings in the same manner and on the like proof as deeds, and shall be evidence of the truth of the several matters therein stated.

(3) Every memorandum made under this section of an appointment of new trustees shall, if it affects public, freehold or customary land held for a charitable purpose, be filed in [the Land Registry Office], and the appointment shall not have any operative effect until it is so filed.

Cf. 1957, No. 18, s. 4 (N.Z.)

In subs. (3) the Land Registry Office has been substituted for the Lands Register Office pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

5. Transfer of properties—Where any property is vested in or held by any person in trust for or for the benefit (directly or indirectly) of any body or corporation, or for the maintenance and support of the officers or members of any body or corporation, whether or not the trust or purpose appears upon the face of the conveyance or other instrument under which the property is held and whether or not the trust is for any charitable purpose, it shall be lawful for that person to convey or transfer the property so held to such trustees as the body or corporation directs or appoints or (in the case of a corporation) to the corporation.

Cf. 1957, No. 18, s. 5 (N.Z.)

PART III

INCORPORATION OF TRUST BOARDS

6. Trustees may apply for incorporation—(1) The trustees of any trust which is exclusively or principally for charitable purposes may apply to the Registrar in accordance with this Part of this Act for the incorporation of the trustees as a Board under this Part of this Act.

(2) No such application shall be made by any trustees if the trustees are already incorporated under any other Act or otherwise, and no such application shall be made by the trustees for the general purposes of any society—

- (a) If the society is itself incorporated under this Part of this Act or under any other Act or otherwise;
- (b) Unless they are authorised to do so by the society.
- (3) Every such application for incorporation shall be in form 1 in the Second Schedule to this Act, or to the like effect, and shall be signed by a majority of the trustees.

Cf. 1957, No. 18, s. 7 (N.Z.)

7. Society may apply for incorporation—(1) Any society which exists exclusively or principally for charitable purposes may apply to the Registrar in accordance with this Part of this Act for the incorporation of the society as a Board under this Part of this Act.

- (2) No such application shall be made by any society—
- (a) If the society is already incorporated under any other Act or otherwise;
- (b) If the trustees for the general purposes of the society are themselves incorporated under this Part of this Act or any other Act or otherwise;
- (c) Unless the application is authorised by the society.
- (3) Every such application for incorporation shall be in form 2 in the Second Schedule to this Act, or to the like effect, and shall be signed by not less than 5 members of the society or by a majority of the trustees of the society.

Cf. 1957, No. 18, s. 8 (N.Z.)

8. Manner in which society may authorise application—For the purposes of sections 6 and 7 of this Act, an application shall be deemed to be authorised by a society, if—

- (a) It is authorised by a majority of the members of that society; or
- (b) A resolution authorising the making of the application is passed by a majority of those present at a meeting of that society, and the Registrar is satisfied that such notice of intention to hold that meeting and of its purpose was given as may be reasonable in the circumstances; or
- (c) The application is authorised by the rules of the society or by any other means provided in those rules.

Cf. 1957, No. 18, s. 9 (N.Z.)

9. How application for incorporation to be executed—Each subscriber to an application for incorporation shall add to his signature his description and address. The signature of each subscriber shall be attested by a witness who is not a subscriber, and the witness shall add to his signature his description and address. When any body corporate is a subscriber its seal shall be affixed to the application.

Cf. 1957, No. 18, s. 10 (1) (N.Z.)

10. Documents to accompany application for incorporation—(1) Every application for incorporation under this Part of this Act shall be accompanied by—

- (a) A copy (certified by one of the subscribers to the application as a correct copy) of the relevant parts of all wills, declarations of trust, and other documents (if any) showing the general purposes of the trustees or society making the application and the trusts on which the applicant or applicants hold any property that is vested in the applicant or applicants as such and is not held for the general purposes of the applicant or applicants:
- (b) A statutory declaration made by one of the subscribers to the application setting forth any trusts on which the applicant or applicants hold any property, being trusts not set out in any document or copy of a document accompanying the application:
- (c) In any case where the application for incorporation is made by a society or by the trustees of a society—

(i) A copy of the rules and other documents (if any) providing for the constitution of the society, certified by one of the subscribers to the application as a correct copy of the then current rules and documents, or (where there are neither any such rules nor any such documents) a statutory declaration made by one of the subscribers to the application setting forth the purposes of the society, the manner in which persons become members or cease to be members thereof, and the manner in which the society operates:

(ii) A statutory declaration made by one of the subscribers to the application to the effect that the application is authorised by the society, and specifying the mode in which it is so authorised.

(2) If the Registrar considers that any documents accompanying an application do not disclose sufficient information regarding the trusts on which any property is held by the applicant or applicants, or regarding the purposes and constitution of any society, he may refuse to register the trustees or society as provided in this Part of this Act until such further information as he requires is supplied to him.

(3) Original documents may in any case accompany any such application instead of copies, and the provision of subsection (3) of section 34 of this Act shall thereupon apply in respect of the documents.

Cf. 1957, No. 18, s. 10 (2), (3), (4) (N.Z.)

11. Registration of Boards—The Registrar, on being satisfied that the purposes of the trust or society (as the case may be) are

exclusively or principally charitable, and that the procedural requirements of this Part of this Act have been observed, shall do the following things:

- (a) Enter the name of the Board in the register kept by him under this Part of this Act, together with particulars as to whether trustees or a society constitute the Board, the place of its registered office, and such other particulars as he thinks fit:
- (b) Issue under his seal a certificate that the Board has been incorporated under this Part of this Act on the date mentioned in the certificate.

Cf. 1957, No. 18, s. 11 (1) (N.Z.)

12. Members of Board from incorporation—From the date of incorporation mentioned in the certificate of incorporation the Board shall be a body corporate, and shall consist of—

- (a) The persons who are for the time being the trustees of the trust in any case where trustees are incorporated as a Board:
- (b) The persons who are for the time being the members of the society in any case where a society is incorporated as a Board.

Cf. 1957, No. 18, s. 11 (2) (N.Z.)

13. Evidence of incorporation—Every certificate of incorporation issued under the seal of the Registrar shall be sufficient evidence, in the absence of proof to the contrary, that the Board therein named was incorporated on the date specified in the certificate, and that the procedural requirements of this Part of this Act have been observed, but shall not be evidence that the purposes of the trust or society are exclusively or principally charitable.

Cf. 1957, No. 18, s. 12 (N.Z.)

14. Effect of incorporation—Every Board shall have perpetual succession and a common seal, and (subject to this Act and to the rules and other documents providing for the constitution of the Board) shall be capable of holding real and personal property of whatsoever nature and whether situated in Western Samoa or elsewhere, and of suing and being sued, and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

Cf. 1957, No. 18, s. 13 (N.Z.)

15. Vesting of property—(1) All property held by the trustees of any such trust or by any such society shall immediately upon incorporation of the trustees or society as a Board vest without transfer, conveyance, or assignment in the Board for the same purposes, with the same powers, and upon and subject to the same trusts, contracts, and equities as then affect the same.

(2) Where any estate or interest in, or any mortgage or charge on, any land registered in the Land Register is vested in a Board by virtue of this section, the Registrar of Land shall, on receiving a written application under the common seal of the Board, register the Board as proprietor of that estate, interest, mortgage or charge.

Cf. 1957, No. 18, s. 14 (N.Z.)

16. Name of Board—(1) No trustees or society shall be incorporated under a name which is identical with that of any other Board, or of any company carrying on business in Western Samoa (whether registered in Western Samoa or not) [or of any other body corporate established or registered] in Western Samoa under any Act, or which so nearly resembles that name as to be calculated to deceive, except where the other Board, company, or body corporate, as the case may be, signifies its consent in such manner as the Registrar requires, and the Registrar is satisfied that registration of the Board by that name will not be contrary to the public interest.

(2) The name of a Board need not include—

(a) The words "Trust Board";

(b) Any of the following words, namely, "Trust", "Board", "Society", and "Incorporated".

Cf. 1957, No. 18, s. 15 (N.Z.)

In subs. (1), pursuant to s. 3 (f) of the Reprint of Statutes Act 1972, and in accordance with the relevant Bill and the corresponding N.Z. enactment, the words "or of any other body corporate established or registered" have been substituted for the words "or other Board, or of any company carrying on business".

17. Change of name—(1) In any case where a society is incorporated as a Board, or where the trustees of a society are incorporated as a Board, the Board may, pursuant to a resolution of the society passed at a general meeting, apply to the Registrar to change the name under which the Board is registered.

(2) In any other case where trustees are incorporated as a Board, the Board may, pursuant to a resolution passed at a meeting of the Board, apply to the Registrar to change the name under which it is registered.

(3) Where a Board applies to the Registrar under this section to change the name under which it is registered and the Registrar approves of the change, the Registrar shall enter the new name in the register in place of the former name, and shall alter the certificate of incorporation to meet the circumstances of the case.

(4) A change of name by a Board under this section shall not affect any rights or obligations of the Board, or render defective any legal proceedings by or against the Board, and any legal proceedings that may have been continued or commenced by or against it in its former name may be continued or commenced by or against it in its new name.

Cf. 1957, No. 18, s. 15 (N.Z.)

18. Right to appeal to Court—(1) Any person dissatisfied with any decision of the Registrar that trustees are not to be registered under this Act, or that a society is not to be so registered, or that a name or change in the name of any Board is not to be approved or registered, may appeal to the Court against that decision.

(2) Notice of every such appeal shall be filed in the Court and served upon the Registrar within 28 days after the day on which the decision appealed against was given.

(3) If in any case the appellant does not prosecute his appeal with due diligence, the Court, on application made by the Registrar or any person interested, may dismiss the appeal and make such order as to costs as it thinks proper.

Cf. 1957, No. 18, s. 17 (N.Z.)

19. Service on a Board—Any notice or legal process shall be deemed to be served upon a Board if left at its registered office or if sent through the post in a registered letter addressed to the Board at that office.

Cf. 1957, No. 18, s. 18 (N.Z.)

20. Form of contracts—(1) Contracts on behalf of a Board may be made as follows:

(a) A contract which if made by private persons would be by law required to be by deed may be made on behalf of the Board in writing under the common seal of the Board, attested in such manner as may be provided in the rules or other documents providing for the constitution of the society that is incorporated as the Board or of which the members of the Board are the trustees, or (in the absence of any such provision)

attested by at least 2 of the trustees who are incorporated as the Board or by at least 2 members of the committee or other governing body of the society that is incorporated as the Board:

- (b) A contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the Board in writing signed by any person acting under its authority, express or implied:
- (c) A contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the Board by any person acting under its authority, express or implied.
- (2) A contract made according to this section shall be effectual in law, and shall bind the Board and its successors and all other parties thereto.

Cf. 1957, No. 18, s. 19 (N.Z.)

21. Presumption of validity of acts of trustees, etc.—All acts or deeds done or made by any person acting in good faith as one of the trustees who for the time being constitute a Board, or as one of the committee or governing body for the time being of a society which constitutes a Board, shall be valid notwithstanding any defect that may afterwards be found in his appointment; and the signature of any person purporting to act as one of those trustees or as a member of that committee or governing body shall, in the absence of proof to the contrary, be sufficient evidence of his being one of those trustees or a member of that committee or governing body, as the case may be.

Cf. 1957, No. 18, s. 20 (N.Z.)

22. Powers in respect of property—(1) Without restricting the powers that are or may be conferred on any Board by or under [the Trustee Act 1975] or this Act or any other Act or otherwise howsoever, it is hereby declared that any Board may except in respect of customary land,—

- (a) Notwithstanding any trusts that may affect its property, with the consent of the Court, dedicate all or any part of its property for any public purpose;
- (b) Notwithstanding any trusts that may affect its property, sell or exchange any part of its property for any purpose upon such terms as it deems expedient: Provided that no property subject to any trust shall be

sold or exchanged in exercise of the power conferred by this paragraph without the consent of the Court in any case where it is of the essence of the trust that the particular property should be used for the purpose of the trust:

- (c) Subject to the rules or other documents providing for the constitution of the Board, purchase any property, whether situated in Western Samoa or elsewhere, and apply any money for the time being held by the Board for or towards any such purpose; and any property so purchased shall be held upon the same trusts as affected the money applied in payment for the property.
- (2) Any money or other property received in consequence of any such dedication or sale or exchange shall be held upon the same trusts as affected the property so dealt with, and any such money may be invested in any investments for the time being authorised by [the Trustee Act 1975] for the investment of trust funds.

Cf. 1957, No. 18, s. 21 (N.Z.)

In subss. (1) and (2) the Trustee Act 1975, being the corresponding enactment in force at the date of this reprint, has been substituted for the Trustee Act 1956 (N.Z.).

23. Power to incorporate for charitable purposes under other Acts—Nothing in this Act shall prevent any company, society, or corporation from being incorporated under any other Act or otherwise for any religious, educational, or other charitable purpose, or from including any such purpose among its objects:

Provided that no Board incorporated under this Part of this Act shall be incorporated under any other Act.

Cf. 1957, No. 18, s. 22 (N.Z.)

24. Alterations of rules and trusts, and new trusts—If any permitted variation is made in the trusts on which any Board holds any property (whether effected by any alteration of the rules or other documents providing for the constitution of any Board or otherwise), or if any additional property becomes vested in any Board on trusts not completely shown in the declarations and the copies of the relevant parts of wills and declarations of trust and other documents already lodged with the Registrar, then, within one month from the date of the variation or vesting, there shall be lodged with the Registrar—

(a) A copy (certified by one of the trustees for the time being constituting the Board or by a member of the committee or governing body of the society constituting the Board, as a correct copy) of the relevant parts of every scheme, order, will, declaration of trust, rules, and other document which (when read where necessary with the copies and documents already lodged with the Registrar) show the trusts as varied and the trusts on which the additional property is vested in the Board; and

(b) A statutory declaration by any such trustee or member setting forth the variation of the trusts or the trusts on which the additional property is held so far as they are not shown in any such scheme, order, will, declaration of trust, rules, or other document.

Cf. 1957, No. 18, s. 23 (1) (N.Z.)

25. Alteration of address of registered office—If any Board desires to alter the address of its registered office, notice of the desired alteration shall be given to the Registrar within one month from the date of the actual alteration in the address of its office. Where any Board gives notice under this section of its desire to alter the address of its registered office and specifies the new address for its registered office with sufficient particularity to enable documents to be served by hand and served by post, the Registrar shall forthwith alter the registered address accordingly.

Cf. 1937, No. 18, s. 23 (2) (N.Z.)

26. Offences and penalties—If in any case the requirements of section 24 or section 25 of this Act are not complied with within any such period of one month, each of the trustees for the time being incorporated as the Board or each member of the committee or other governing body of the society incorporated as the Board, and each officer of the Board commits an offence and shall be liable on conviction to a fine not exceeding [10 senes] for every day thereafter during which the default continues.

Cf. 1957, No. 18, s. 23 (3) (N.Z.)

27. Voluntary winding up of a society as a Board—(1) In any case where a society is incorporated as a Board, the Board may be wound up voluntarily if at a general meeting of its members it passes a resolution requiring the Board to be wound up, and the resolution is confirmed at a subsequent general meeting called

for that purpose and held not sooner than the 28th day and not later than the 42nd day after the date on which the resolution so to be confirmed was passed.

(2) Subject to this Act and to any regulations made thereunder, the voluntary winding up of a Board shall be governed by the same rules as the voluntary winding up of a company under the Companies Act 1955 (N.Z.), as applied and varied by the Samoa Companies Order 1935 (Reprint S.R. 1956/126 (N.Z.)).

Cf. 1957, No. 18, s. 24 (N.Z.)

28. Winding up of a Board by the Court—(a) A Board may be wound up by the Court if the Court is satisfied that it is just and equitable that the Board should be wound up.

(2) Any application to the Court for the winding up of a Board may be presented by—

- (a) The Attorney-General; or
- (b) The Board; or
- (c) A member thereof; or
- (d) A creditor thereof; or
- (e) The Registrar; or
- (f) Any other person who adduces proof of circumstances which in the opinion of the Court make it proper that he should make the application.

(3) All costs incurred by the Attorney-General or the Registrar in making application for the winding up of a Board shall, unless the Court otherwise orders, be a first charge on the assets of the Board.

(4) Subject to this Act and to any regulations made thereunder, every application to the Court for the winding up of a Board, and every winding up of a Board by the Court, shall be governed by the same rules as in the case of the winding up of a company by the Court under the Companies Act 1955 (N.Z.), as applied and varied by the Samoa Companies Order 1935 (Reprint S.R. 1956/126 (N.Z.)).

Cf. 1957, No. 18, s. 25 (N.Z.)

29. Dissolution by Registrar—(1) The Registrar may at any time send to any Board, by registered letter addressed to it at its registered office, an inquiry as to whether or not the Board is still carrying on its operations. If no reply is received to that letter within 6 months after the date of the posting thereof, or if the letter is not delivered and is returned to the Registrar, that shall be sufficient to satisfy the Registrar that the Board is no longer carrying on its operations:

Provided that nothing in this subsection shall prevent the Registrar from satisfying himself to that effect in any other manner.

(2) If at any time the Registrar is satisfied that a Board is no longer carrying on its operations or has been registered by reason of a mistake of fact or law, he may make under his seal a declaration that the Board is dissolved as from the date of the declaration and shall thereupon publish the declaration in the *Gazette*, Savali and each newspaper published in Western Samoa, and make in the register an entry of the dissolution of the Board.

(3) On the making of that entry the incorporation of the Board shall cease as from the date of the declaration.

(4) At any time thereafter the Registrar, on being satisfied that the declaration was made in error and ought to be revoked, may revoke the same by a declaration in the *Gazette*, Savali and each newspaper published in Western Samoa, and shall thereupon make an entry of that revocation in the register, and the Board shall thereupon be revived from the date of the dissolution thereof as if no such dissolution has taken place.

Cf. 1957, No. 18, s. 26 (N.Z.)

30. Distribution of surplus assets on winding up or dissolution—On the winding up of a Board or on its dissolution by the Registrar, all surplus assets after the payment of all costs, debts, and liabilities shall be disposed of as the Court directs.

Cf. 1957, No. 18, s. 27 (N.Z.)

31. Register of Boards—The Registrar shall keep a register in which shall be recorded all matters required by this Act or by any regulations under this Act to be recorded by the Registrar.

Cf. 1957, No. 18, s. 28 (1) (N.Z.)

32. Seal of Registrar—The seal of the Registrar may be used for the authentication of any documents required for the purposes of this Part of this Act.

Cf. 1957, No. 18, s. 28 (2) (N.Z.)

33. New certificate for one lost—Any Board may, on payment of the prescribed fee and on proof that every certificate of the incorporation of the Board which has previously been issued has been lost or destroyed, require the Registrar to issue under his seal a further certificate of incorporation in respect of the Board.

Cf. 1957, No. 18, s. 29 (2) (N.Z.)

34. Inspection, production, and evidence of documents kept by Registrar—(1) Any person may inspect the documents kept by the Registrar on payment of such fees as may be prescribed.

(2) Any person may, on payment of the prescribed fee, require a copy of or extract from the register or any document kept by or lodged with the Registrar under this Part of this Act to be given and certified to be a true copy or extract under the hand and seal of the Registrar.

(3) A copy of or extract from the register or any document kept by or lodged with the Registrar under this Part of this Act, certified to be a true copy or extract under the hand and seal of the Registrar (whose official position it shall not be necessary to prove), shall in all legal proceedings be admissible in evidence as of equal validity with the original document.

(4) No process for compelling the production of any document kept by the Registrar shall issue from any Court, except with the leave of that Court, and any such process if issued shall bear thereon a statement that it is issued with the leave of the Court.

Cf. 1957, No. 18, s. 29 (1), (3), (4), (5) (N.Z.)

35. Ascertainment of fees payable—At any time while there are no regulations prescribing the fees payable under section 33 or section 34 of this Act, or so far as no such fees are prescribed by any regulations, the fees so payable shall be the same as those payable under the corresponding provisions in section 9 of the Companies Act 1955 (N.Z.), as applied and varied by the Samoa Companies Order 1935 (Reprint S.R. 1956/126 (N.Z.)). All fees paid to the Registrar under this Act shall be paid into the Public Account, and shall form part of the Treasury Fund.

Cf. 1957, No. 18, s. 29 (6) (N.Z.)

36. Exemption from fees—Except as provided in sections 33, 34 and 35 of this Act, no fee shall be payable to the Registrar in respect of any document made or thing done under or for the purposes of this Part of this Act.

Cf. 1957, No. 18, s. 30 (N.Z.)

PART IV

MISCELLANEOUS

37. Inquiries into condition and management of charities—(1) It shall be lawful for the Attorney-General from time to time, as he in his discretion may think fit, to examine and

inquire into all or any charities in Western Samoa, and to examine and inquire into the nature and objects, administration, management, and results thereof, and the value, condition, management, and application of the property and income belonging thereto.

(2) The Attorney-General may, instead of himself making any such inquiry or examination, from time to time request [the Public Service Commission of Western Samoa] to appoint an officer of the Government service or any person to make the inquiry or examination in any specified case or cases; and it shall be lawful for the officer or person so appointed to examine and inquire into the charity or charities in Western Samoa to which his appointment relates, and the nature and objects, administration, management, and results thereof, and to examine and inquire into the value, condition, management, and application of the property and income belonging thereto.

(3) It shall be the duty of all trustees and persons acting or having any concern in the management or administration of any such charity into which any such examination or inquiry is being made, or of the property or income thereof, on request, to produce to the Attorney-General or to the officer or person making the examination or inquiry all books, papers, writings, and documents in relation to the charity or the property and income thereof, or to the administration, management, value, condition, and application of that property and income, and to answer all questions and give all assistance in connection with the examination or inquiry which they are reasonably able to answer or give. Every person who acts in contravention of or fails to comply in any respect with any provision of this subsection commits an offence and shall be liable on conviction to a fine not exceeding [\$40].

(4) Without restricting the generality of the foregoing provisions of this section, it is hereby declared that for the purposes of any such inquiry or examination the provisions of the Commissions of Inquiry Act 1964 shall, so far as they are applicable and with the necessary modifications, apply as if the Attorney-General or the officer or person were a Commission of Inquiry appointed under that Act.

Cf. 1957, No. 18, s. 58 (N.Z.)

In subs. (2) the reference to the Public Service Commission of Western Samoa was substituted for a reference to the Public Service Commission by s. 3 of the Public Service Act 1965.

As to proof that the Attorney-General has given leave, consent, or a certificate, see s. 14 of the Criminal Procedure Act 1972.

38. Proceedings to enforce or vary charitable trust or to require a new scheme—(1) Application may be made to the Court by the Attorney-General or any officer of the Government service or person in respect of any property or income subject to a trust or a charitable purpose within the meaning of this Act, whether or not a scheme in respect of the property or income or money has been approved by the Court, for an order—

- (a) Requiring the trustees to carry out the trusts on which the property or income or money is held, and to comply with the provisions of the scheme (if any);
- (b) Requiring any trustee to meet his liability for any breach of trust affecting the property or income or money as the Court may direct;
- (c) Excluding any purpose from the purposes for which the property or income or money may be used, applied, or disposed of;
- (d) Giving directions in respect of the administration of the trust; or in respect of any examination or inquiry under section 37 of this Act; or of any question to be answered or assistance to be given by any person in connection with any such examination or inquiry;
- (e) Directing that on and after the date of the order, or on and after any subsequent date specified in the order, the property or income or money subject to the trust shall not be used or applied or disposed of otherwise than in accordance with a scheme which, after the date of the order, is approved by the Court.

(2) Copy of any such application shall be served on the trustees of the property or income or money, and on the Attorney-General.

(3) On any such application the Court may decide what persons shall be heard before it in support of or in opposition to the application.

(4) On any such application the Court may make such order as it thinks fit.

Cf. 1957, No. 18, s. 60 (N.Z.)

39. Alteration of rules of society or corporation not to affect existing trusts—In any case where any company or society or corporation incorporated under this Act or any other Act or otherwise holds any property upon trust for any charitable purpose defined by reference to the rules or other documents constituting the company or society or corporation, no alteration of the said rules or documents shall vary the trusts for the time being affecting any such property, unless the variation is

permitted by the instruments creating the trust and defining its purpose or is approved by the Court.

Cf. 1957, No. 18, s. 61 (N.Z.)

40. Trusts for recreational and similar purposes
—(1) Subject to the provisions of this section, it shall for all purposes be and be deemed always to have been charitable to provide, or assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare:

Provided that nothing in this section shall be taken to derogate from the principle that a trust or institution to be charitable must be for the public benefit.

(2) The requirement of subsection (1) of this section that the facilities are provided in the interests of social welfare shall not be treated as satisfied unless—

(a) The facilities are provided with the purpose of improving the conditions of life for the persons for whom the facilities are primarily intended; and

(b) Either—

(i) Those persons have need of such facilities as aforesaid by reason of their youth, age, infirmity, disablement, poverty, race, occupation, or social or economic circumstances; or

(ii) The facilities are to be available to the members of the public at large or to the male or female members of the public at large.

(3) Without restricting the generality of the foregoing provisions of this section it is hereby declared that, subject to the said requirement, subsection (1) of this section applies to the provision of facilities at public halls, community centres, and women's institutes, and to the provision and maintenance of grounds and buildings to be used for purposes of recreation or leisure-time occupation, and extends to the provision of facilities for those purposes by the organising of any activity.

(4) Nothing in this section shall be taken to restrict the purposes which would be regarded as charitable if this section had not been passed.

(5) Nothing in this section shall—

(a) Apply to make charitable any trust, or validate any disposition, of property if before the date of the commencement of this Act that property or any property representing or forming part of it, or any income arising from any such property, has been paid

or conveyed to, or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust or disposition; or

(b) Affect any order or judgment made or given before the date of the commencement of this Act; or

(c) Require anything properly done before that date, or anything done or to be done in pursuance of a contract entered into before that date, to be treated for any purpose as wrongful or ineffectual.

(6) Except as provided in subsection (7) of this section, nothing in this section shall require anything to be treated for the purposes of any enactment as having been charitable at a time before the date of the commencement of this Act, so as to invalidate anything done or any determination given before that date.

(7) Where any tax, charge, or duty has been paid within 6 years before the date of the commencement of this Act and is found to have been paid in error or in excess by virtue of the operation of subsection (1) of this section, the Commissioner of Inland Revenue shall refund the amount thereof or the amount of the excess, as the case may be, as statutory expenditure to the person entitled to receive it, but no such refund shall be made unless application in writing therefor is received by the Commissioner of Inland Revenue within 2 years after the date of the commencement of this Act; and no refund shall be made of any tax, charge, or duty paid more than 6 years before the date of the commencement of this Act.

Cf. 1963, No. 21, s. 3 (N.Z.)

41. Inclusion of non-charitable and invalid purposes not to invalidate a trust—(1) In this section the term "imperfect trust provision" means any trust under which some non-charitable and invalid as well as some charitable purpose or purposes is or are or could be deemed to be included in any of the purposes to or for which an application of the trust property or any part thereof is by the trust directed or allowed; and includes any provision declaring the objects for which property is to be held or applied, and so describing those objects that, consistently with the terms of the provision, the property could be used exclusively for charitable purposes, but could nevertheless (if the law permitted and the property was not used as aforesaid) be used for purposes which are non-charitable and invalid.

(2) No trust shall be held to be invalid by reason that the trust property is to be held or applied in accordance with an imperfect trust provision.

(3) Every trust under which property is to be held or applied in accordance with an imperfect trust provision shall be construed and given effect to in the same manner in all respects as if—

(a) The trust property could be used exclusively for charitable purposes; and

(b) No holding or application of the trust property or any part thereof to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed.

(4) This section shall apply to every trust under which property is to be held or applied in accordance with an imperfect trust provision, whether the trust is declared before or after the commencement of this section:

Provided that this section shall not apply to any trust declared by the will of any testator dying before, or to any other trust declared before, the 26th day of October 1935 (being the date of the passing of the Trustee Amendment Act 1935 (N.Z.)), if before the 1st day of January 1957 (being the date of the commencement of the Trustee Act 1956 (N.Z.))—

- (a) The trust has been declared to be invalid by any order or judgment made or given in any legal proceedings; or
- (b) Property subject to the imperfect trust provision or income therefrom has been paid or conveyed to or applied for the benefit of, or set apart for, the persons entitled by reason of the invalidity of the trust.

Cf. 1963, No. 21, s. 4 (N.Z.)

42. Regulations—(1) The Head of State, acting on the advice of Cabinet, may, from time to time by Order, make all such regulations as in his opinion may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the date of the making thereof if the Assembly is then in session, and, if not, shall be laid before the Assembly within 28 days after the date of the commencement of the next ensuing session.

Cf. 1957, No. 18, s. 62 (N.Z.)

43. Repeal—Section 82 of the Trustee Act 1956 (N.Z.) is hereby repealed as to its application to Western Samoa.

SCHEDULES

FIRST SCHEDULE

Section 4 (2)

MEMORANDUM OF APPOINTMENT OF NEW TRUSTEES

MEMORANDUM of the choice and appointment of new trustees of the following property namely [.....]

(Description of property)

at a meeting of [.....]

(Description of congregation, society, or body of persons)

duly convened and held for that purpose at or in [.....] (Name of place)

on [.....] (Date)

[.....] (Name of chairman)

was chairman.

Names and description of all the trustees on the constitution or last appointment of trustees made on the day of

Adam Bell, of

Charles Dixon, of

Edward Foster, of

Names and description of all the trustees in whom the said property now becomes legally vested:

FIRST: Old continuing trustees—

Charles Dixon, of

Edward Foster, of

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Section 7 (3)

Benjamin Adams, of

Jonathan Edmonds, of

DATED this.....day of.....19.....

A. B.,

A. D.,
Chairman of the said Meeting.

Signed by the said A. B., as chairman of the said meeting in the presence of:

C.D.
E.F.

SECOND SCHEDULE

Section 6 (3)

FORMS OF APPLICATION FOR INCORPORATION AS A BOARD

Form 1

The Charitable Trusts Act 1965

APPLICATION FOR INCORPORATION OF TRUSTEES AS A BOARD

I. We, being trustees for Board under the provisions of the Charitable Trusts Act 1965.

2. We desire the name of the Board to be

3. The registered office of the Board is to be at [.....]

State an address with sufficient particularity for service by post of documents thereafter

4. This application is made with the authority of [redacted]

State name of society for which the trustees act and mode of authorisation by the society. If there is no such society this should be stated.

5. The said society is not itself incorporated.

6. The following documents are attached to this application:

.....].
(Here insert a list sufficiently describing and identifying each document)

Dated this day of