

SOUTH AUSTRALIA

**DA COSTA SAMARITAN FUND (INCORPORATION OF TRUSTEES)
ACT 1953**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **1 July 1999**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LEGISLATIVE HISTORY**

DA COSTA SAMARITAN FUND (INCORPORATION OF TRUSTEES) ACT 1953

being

Da Costa Samaritan Fund (Incorporation of Trustees) Act 1953
No. 54 of 1953 [Assented to 17 December 1953]

as amended by

Da Costa Samaritan Fund (Incorporation of Trustees) Act Amendment Act 1969 No. 3 of 1969 [Assented to 27 February 1969]

Da Costa Samaritan Fund (Incorporation of Trustees) Act Amendment Act 1990 No. 5 of 1990 [Assented to 29 March 1990]¹

Financial Sector Reform (South Australia) Act 1999 No. 33 of 1999 [Assented to 17 June 1999]²

¹ Came into operation 26 July 1990: *Gaz.* 26 July 1990, p. 397.

² **Schedule (item 17) came into operation 1 July 1999: being the date specified under section 3(16) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* of the Commonwealth as the transfer date for the purposes of that Act.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

An Act to incorporate the trustees of the Da Costa Samaritan Fund, and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Da Costa Samaritan Fund (Incorporation of Trustees) Act 1953*.

Interpretation

2. In this Act, unless inconsistent with the context or some other meaning is clearly intended—

"**the trust**" means the Da Costa Samaritan Fund Trust as incorporated by this Act;

"**the Trust Deed**" means the Indenture made on the fourteenth day of September, 1898, between His Excellency Sir Thomas Fowell Buxton of the one part and Sir John Colton, William Gilbert, and Maurice Salom of the other part whereby certain property therein mentioned was settled on certain trusts named therein, of which indenture a memorial was registered in the General Registry Office on the tenth day of January, 1899, and bears the number 246 in Book 436;

"**the trustees**" means the trustees of the trust under this Act;

"**the trust property**" means the property transferred, conveyed, and assigned to the trust by virtue of section 18 of this Act and any property which may be acquired by the trust after the passing of this Act.

Da Costa Samaritan Fund Trust

Incorporation

3. (1) There shall be constituted a body to be known as the "Da Costa Samaritan Fund Trust".

(2) The trust shall be a body corporate with perpetual succession and a common seal, and shall have power to hold property of all kinds.

(3) All courts, judges, and persons acting judicially shall take judicial notice of such seal when affixed to any instrument and shall, until the contrary is proved, assume that the seal was properly affixed to the instrument.

Trustees

4. (1) There shall be not less than three trustees.

(2) The first trustees shall be Robert Moore Steele, Charles Edward Spiller, and Harold Tom Young.

(3) The trust may at any time appoint additional trustees: Provided that no appointment of an additional trustee shall take effect until the Governor shall have approved thereof in writing.

Vacancies

5. (1) The office of a trustee shall be vacant where the trustee—

(a) dies;

- (b) resigns by notice in writing to the trust;
- (c) ceases to reside in the State;
- (d) absents himself without permission of the trust from four consecutive meetings of the trust and is declared by resolution of the trust to have forfeited his seat;
- (e) is removed from office by the Governor pursuant to this section.

(2) The Governor may remove any trustee from office for neglect of duty, incapacity to perform his duties, dishonourable conduct, or other cause deemed sufficient by the Governor.

Filling of vacancies

6. (1) Subject to subsection (3) of this section where any vacancy occurs in the office of a trustee, the trust, or if there are less than two surviving or continuing trustees, the surviving or continuing trustee or the executors or administrators of the last surviving trustee shall appoint a person to fill the vacancy; Provided that no such appointment shall take effect until the Governor shall have approved thereof in writing.

(2) If for any reason a vacancy is not filled within three months of the occurrence of the vacancy, the Governor may appoint a person to fill the vacancy.

(3) Where there are at least three surviving or continuing trustees it shall not be necessary to fill a vacancy.

Quorum and majority decision

7. (1) A majority of the trustees shall form a quorum for the transaction of the business of the trust.

(2) Every matter coming before the trust shall be decided by the votes of a majority of the trustees present at a duly convened meeting of the trust.

(3) If at a meeting where only two trustees are present the voting on any question is equal, the matter in issue shall be postponed to a meeting at which at least three trustees are present.

Chairman

8. (1) The trust shall elect one of the trustees to be chairman, and such chairman shall hold office for so long as the trust shall at the time of his election or subsequently from time to time determine.

(2) The chairman shall preside at meetings of the trust or in his absence a trustee chosen by the trust.

Meetings

9. Subject to any rules made by the trust, all meetings of the trust shall be convened by such person and held at such time and place as the trust determines.

Minutes

10. The trust shall cause minutes to be kept of the proceedings at all meetings of the trust.

Procedure

11. Subject to this Act and any rules made by the trust, the trust may regulate its own procedure.

Remuneration

12. (1) The trustees shall be paid out of the trust property by way of remuneration for their services the sum of sixty pounds per annum or such other sum as may be allowed from time to time by the Supreme Court or a judge thereof, and that sum shall be divided between them in such manner as they shall agree, or if they fail to agree, equally.

(2) The trustees may apply to the Supreme Court or a judge thereof for commission or other remuneration to be paid out of the trust property as though they were unincorporated trustees, and the Supreme Court shall have the same power to order such commissions or remuneration to be paid to the trustees as it would have if they were unincorporated trustees.

Accounts

13. The trust shall keep proper books and accounts and shall prepare in each year a statement of its income and expenditure and a balance sheet.

Audit

14. (1) The accounts of the trust shall be audited annually by a registered company auditor within the meaning of the *Companies Act 1962-1968* and approved by the Chief Secretary.

(2) The trust and every officer thereof shall make the books and accounts of the trust available to the auditor so approved for the purpose of audit and shall furnish the auditor so approved with all other facilities and information which he reasonably requires for the purpose of the audit.

(3) The auditor so approved shall—

- (a) report annually to the Chief Secretary on the financial position and accounts of the trust; and
- (b) give annually a certificate signed by his own hand to the Chief Secretary certifying that he has inspected the documents of title and securities evidencing the property held by the trust and is satisfied that the balance-sheet contains a true statement of the property held by the trust.

Validity of proceedings

15. Any act or proceeding of the trust shall not be invalid solely on the ground that at the time when the act was done or proceeding taken that there was a vacancy in the office of any trustee or any defect in the appointment of any trustee or in the appointment of any chairman or any trustee to preside at a meeting of the trust.

Officers

16. The trust may appoint a secretary and any other employees whom it requires to assist it in the exercise of its powers and duties.

Contracts

17. (1) Contracts on behalf of the trust may be made as follows:

- (a) a contract which if made between private persons would be by law required to be in writing under seal may be made on behalf of the trust in writing under the common seal of the trust;
- (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 trust 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 trust 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 trust and all its successors and all other parties thereto.

(3) A contract made on behalf of the trust may be varied or discharged in the same manner in which it is authorised by this section to be made.

Vesting, Trusts, and Management

Transfer and conveyance of property to trust

18. (1) The trustees of the Trust Deed shall transfer, convey, and assign to the trust all property vested in them at the commencement of this Act.

(2) No stamp duty shall be payable upon any such transfer, conveyance, or assignment.

Trusts

19. (1) The trust shall stand possessed of the trust property upon trust—

- (a) to pay out of the income thereof or out of any money being part of the trust property and representing income, the expenses of management and other expenditure lawfully incurred by the trust on or in connection with the trust property; and
- (b) to apply the balance of the income and such money from time to time in such manner as the trust thinks fit for the benefit of the convalescent patients of any hospital or hospitals to which this section applies.

(2) This section applies to—

- (i) the Royal Adelaide Hospital; and
- (ii) The Queen Elizabeth Hospital; and
- (iii) any other hospital which for the time being is declared by proclamation to be a hospital to which this section applies.

(3) The Governor, on the recommendation of the trustees, may by proclamation declare any hospital (being an incorporated hospital within the meaning of the *South Australian Health Commission Act 1976*) to be a hospital to which this section applies, and may by proclamation vary or revoke any such declaration.

Validation

19A. (1) Where any moneys were, before the commencement of the *Da Costa Samaritan Fund (Incorporation of Trustees) Act Amendment Act 1969*, in the opinion of the trustees, applied by them substantially for the benefit of convalescent patients of the Royal Adelaide Hospital, such application of those moneys by the trust shall be deemed never to have been invalid by reason only that a benefit might also have been thereby conferred upon persons who were convalescent patients or suffering illness or injury but were not themselves convalescent patients of that hospital.

(2) Where any moneys are, after the commencement of the *Da Costa Samaritan Fund (Incorporation of Trustees) Act Amendment Act 1969*, in the opinion of the trustees, applied by them substantially for the benefit of the convalescent patients of a hospital or hospital to which section 19 of this Act applies, such application of those moneys by the trust shall be deemed not to be invalid by reason only that a benefit may also be thereby conferred upon persons who are convalescent patients or suffering illness or injury but are not themselves convalescent patients of any such hospital.

Banking of income

20. The trust shall as soon as is convenient after the receipt of any income pay it to the credit of the trust at an ADI carrying on business in Adelaide.

Management of trust property

21. The trust shall have the same power to manage or let land forming part of the trust property as the trustees of the Trust Deed had to manage, or let land under the Trust Deed, and may do all things in respect of land forming part of the trust property which the trustees of the Trust Deed were authorised to do in respect of land under the Trust Deed.

Investment

22. The trust may from time to time vary any investments or security being or representing part of the trust property.

Investment of income

23. (1) The trust may invest any income of the trust property or any money being part of the trust property and representing income which is not immediately required for the purpose of the trust in any investment or security authorised by law.

(2) The trust may at any time sell any investment or security purchased from income by the trust or by trustees of the Trust Deed and apply the proceeds of such sale as if the proceeds were income then arising from the trust property.

Gifts

24. The trust may accept gifts of any property, and any such property shall be held upon the trusts, powers, and obligations of this Act.

Advice and directions

25. (1) The trust or any trustee thereof may apply to the Supreme Court or a judge thereof for advice directions, or orders as to matters connected with the management or administration of the trust property or the construction of any deed or document relating to the trust or the trust property in like manner as any unincorporated trustee.

(2) The proceedings upon or relating to such application and any judgment or order made thereon shall be the same and have the same effect as if such application were made by any unincorporated trustee.

Rules

26. (1) The trust may make rules for the management and administration of the business of the trust, and in particular and without prejudice to the generality of the foregoing may make rules prescribing—

- (a) the form and manner in which applications by convalescent patients for assistance from the trust are to be made;
- (b) the duties of the secretary and other officers of the trust;
- (c) the summoning of meetings of the trust and the procedure at such meetings.

(2) The trust may by rules revoke or vary any such rules.

(3) Any rules made under this section shall have the common seal of the trust affixed thereto.

(4) Section 38 of the *Acts Interpretation Act 1915-1949* shall apply to rules made under this section.

APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 14(1):	amended by 3, 1969, s. 2
Section 19:	substituted by 3, 1969, s. 3
Section 19(3):	substituted by 5, 1990, s. 3
Section 19A:	inserted by 3, 1969, s. 4
Section 20:	amended by 33, 1999, Sched. (item 17)
Section 26(1):	amended by 3, 1969, s. 5