



*Amended No 3950  
1887  
See in particular  
s. 3 of Act of 1858*

ANNO VICESIMO SECUNDO

# VICTORIÆ REGINÆ.

A.D. 1858.

## No. 21.

*An Act to provide for the incorporation of Institutions or Associations formed for the promotion of Religious, Charitable, Educational, Scientific, and other useful objects.*

*Act in the Act  
Sec. Sec. 11*

[Assented to, 24th December, 1858.]

*Off to the operations  
Preamble.  
Gazette  
14 July 1859*

WHEREAS great inconvenience has arisen in cases where property belonging to institutions established for the promotion of religion, education, and benevolent and useful objects, has become vested in trustees, by the refusal of such trustees to act, and by the necessity for the frequent change of trustees; and great expense is often incurred by reason of such change, and the appointment of other trustees, and the transfer of such property to such other trustees; and it is expedient, for the encouragement of such institutions, to facilitate the incorporation of the same—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. That it shall be lawful for the trustees or trustee of any such institution now or hereafter to be formed or established, or for any one of such trustees, to give notice, by advertisement, once in the *Government Gazette*, and once in every newspaper published in Adelaide, in the form or to the effect set forth in Schedule A to this Act, of his desire to incorporate the institution of which he is trustee, and in every such advertisement, a copy of the memorial next hereinafter mentioned shall be set forth; and on or at any time after the expiration of three calendar months from the date of the last advertisement in such *Gazette* and newspaper, it shall be lawful for such trustee

Notice of desire to incorporate institutions to be given by the trustees, and in what manner memorial to be filed in the Supreme Court. Certificate of incorporation to be granted.

*Buller  
No. 1400  
1867*

*- See Sec. 11.*

trustee (unless he shall be restrained as hereinafter mentioned), to file a memorial in the Supreme Court, in the form or to the effect of the memorial prescribed in Schedule B to this Act, and containing the particulars therein required to be set forth, together with an affidavit or declaration by such trustee, verifying the contents of such memorial; and thereupon the Master of the Supreme Court shall grant to the trustee so filing and verifying such memorial, a certificate of incorporation, in the form specified in the Schedule marked C to this Act, which certificate shall, within fourteen days from the date thereof, be deposited in the Registry Office of the said Province; and the same, if so deposited, or any copy thereof, certified by the Registrar or any Deputy-Registrar of the said Province, shall be received in evidence, without further proof, in any Court of law or equity, that such institution has been duly incorporated under this Act: Provided always, that it shall be lawful for any co-trustee, or any person interested in the institution sought to be incorporated, after notice given in the *Gazette* and newspapers in manner aforesaid, and before the expiration of three calendar months from the date of the last published notice, to apply to the Supreme Court, after a bill filed, for an injunction to restrain the trustee giving such notice from all further proceedings; and the said Court shall have full power and authority to determine the matters in question, notwithstanding all the parties interested shall not be parties to the suit.

Proviso.

Memorial of the name of the person authorized to use the seal of the institution, to be filed in the Supreme Court.

2. All such incorporated institutions as aforesaid shall, as soon as conveniently may be after such incorporation, file in the Supreme Court a memorial in the form or to the effect set forth in Schedule D to this Act, containing the name or names, together with the place or places of abode, of the person or persons authorised to use the common seal of the corporation, with an impression of such seal, and upon every change of such person or persons, a fresh memorial to the like effect as last aforesaid shall be filed in the said Court; and every such person shall in all cases countersign any deed, instrument, or document, to which the seal of the corporation shall be fixed, in order to give validity thereto, and shall also sign the memorial required by this clause to be filed, together with an affidavit that he is the person duly authorised by the institution to use the seal of the corporation; and at the time of filing such memorial, a copy on parchment of the rules and regulations of the institution, or the trusts relating thereto, shall also be filed in the Supreme Court; and if such rules, regulations, or trusts, shall be embodied in a deed, then a copy of such deed shall be filed, and a like copy shall from time to time be filed in the said Court of all additional rules, regulations, and trusts, and of any alteration therein which may from time to time be made; and all such rules, regulations, and trusts, and additions and alterations thereto or therein, shall be verified by the affidavit of the person or persons authorised for the time being to use the common seal of the institution. And in case any such incorporated institution shall neglect to file such memorial as last aforesaid, or such copy of the rules, regulations, and trusts, or of the additions or alterations thereto or therein from time to time, then the

*all such persons or such one or more of them as shall be fixed by the rules of the institution in no. 395 of '87, s. 1*

*But see No. 395 of '87, s. 3.*

*"and otherwise deal with the same as fully and effectually as an individual owner could" subject only to such limitations, if any, as may be fixed by the rules of the institution.*  
473  
c/o 395 N 87, S. 2

powers of the institution shall be suspended during such period as the institution shall so neglect as aforesaid. Nevertheless, every such institution shall be liable to be sued and proceeded against as a corporation; and all dealings and transactions between the institution and any person whomsoever shall be valid, notwithstanding such suspension against the institution, and all persons claiming under such institution; and the production of the memorial for the time being filed in the said Court under the provisions of this clause, or an office copy thereof, shall be conclusive evidence in any Court of Law or Equity, and in all proceedings and transactions whatsoever that the person named in such memorial was at the time of his using the common seal of the Corporation, duly authorized so to do.

3. Upon such certificate of incorporation as aforesaid being deposited in the Registry Office in manner hereinbefore provided, the institution shall, as from the date of such certificate, be incorporated for the purposes following, that is to say:

When certificate deposited, the institution to be incorporated.

- I. For the purpose of using the name of the institution, adding thereto the word incorporated.
- II. For the purpose of having and using a common seal (with power to break, alter, and change the same from time to time), but on which must be inscribed the name of the institution.
- III. For the purpose of suing and being sued by the name of the corporation in respect of any claim by or upon the institution, upon or by any person, whether interested in the institution or not.
- IV. To purchase and hold lands, tenements, and hereditaments, in the name of the institution, and for the purposes thereof, and to let, sell, or dispose of the same, and execute conveyances and assurances thereof.

*mortgage  
c/o 395 N 87  
mortgage*

*"Hold" see Jam  
Ways 3 Feb 22:18  
11-2/14  
Burtan 110:  
117 & 429:11 & 1-11  
18 & 88  
Ded pp 104 et seq*

4. Nothing in this Act contained shall extend to restrict the liability of individual members of any incorporated institution under any judgment, decree, or order for the payment of money which shall have been obtained against such institution in any action or suit prosecuted by or against such institution in any Court of law or equity.

Liability of individual members not to be restricted.

*This is truncated  
See 780 V.C. 110,  
S.S. 25, 66*

5. The proprietors or other persons having the management of, or being interested in, any institution intended to be brought under the operation of this Act, may do all such acts as may be necessary for bringing such institution under the operation of this Act; and for that purpose it shall be lawful for such proprietors or other persons as aforesaid, to alter, vary, or add to the rules and regulations of the institution, so as to enable the same to comply with the provisions of this Act, anything in such rules and regulations contained to the contrary notwithstanding; and in all cases in which

Persons interested in any institution may, with consent of general meeting, alter rules so as to bring the institution under the operation of this Act.

*X "dispose". What does it mean? See  
Jugd Powers Ded pp 104 et seq Woodville L & J, 9 ed, p. 4  
James to 457-8  
Ded pp 104 et seq - this is a power to mortgage  
which is a conditional sale: Miles & Banks 3 P. Wms 9 See  
Stoughton & Cuddey 1 B on 21-635*

any such alteration, variation, or addition shall be necessary, the same may be made with the consent of the majority present at a general meeting of the proprietors or other persons having the management of or being interested in such institution.

Personal property to vest in corporation after filing of memorial.

Real estate to vest after memorial filed in Registry Office.

6. All personal property held by any trustee or trustees of an institution, shall, after the filing of such memorial as is provided in Schedule D to this Act, vest in the corporation; and all real estate vested in any such trustee or trustees, and described in the memorial next hereinafter mentioned, shall, after the certificate of incorporation shall be deposited in the Registry Office, and a memorial, in the form prescribed in Schedule E to this Act, verified by the signature of one or more of the trustees to a declaration at foot thereof, of the truth of its contents, shall have been filed in the said Registry Office, vest in the corporation without any conveyance thereof; and the filing of such memorial shall be taken to be, to all intents and purposes, a registration of the conveyance of the real estate therein described from the trustees or trustee of the institution to the corporation, within the meaning of the Act of the Legislative Council of South Australia, No. 8, of the fifth year of the reign of Her Majesty Queen Victoria.

Service of notice and process on the institution.

7. In all cases wherein it may be necessary for any person to serve or to give any summons, demand, or notice, or any writ or other proceeding at law or in equity, or otherwise, upon any institution incorporated under this Act, service thereof upon the person or persons named in the before-mentioned memorial as the person or persons authorized to use the common seal of the institution, by leaving the same at the usual place of abode of such person or persons, shall be deemed good and sufficient service of the same respectively on the said institution.

Notices, &c., by institutions, how to be signed.

8. In all cases wherein it may be necessary for any institution incorporated under this Act to serve or give any summons, demand, or notice of any kind whatsoever, to any person or corporation, such summons, demand, or notice may be given in writing, signed by the person, or some one of the persons (if more than one), authorized to use the seal of the institution, or by the attorney or solicitor for the time being of the institution, without being required to be under the common seal of the institution.

Before whom affidavits to be made.

9. All affidavits and declarations required to be made by this Act, may be made before a Special Magistrate or a Notary Public of the Province.

Fees.

10. The fees specified in Schedule F to this Act, shall be payable in respect of the several matters and things therein mentioned.

Construction clause.

11. The word "institution," when used in this Act, shall include churches, chapels, and all religious bodies; schools, hospitals, and all benevolent and charitable institutions; mechanics' institutes, and associations

associations formed for the purpose of promoting and encouraging literature, science, and art; and all other institutions and associations formed for promoting the like objects, other than associations formed for the purpose of trading or deriving pecuniary profit to the members from the transactions of the Society, and other than such associations as are within the provisions of an Act of Council, No. 25 of 1855-6, intituled "An Act to provide for the registration of Joint Stock Companies, and for limiting the liability of members thereof." Every word importing the singular number only shall extend to the plural number also, and every word importing the male gender only shall equally apply to females.

12. In citing this Act in any other Act, or in any instrument, document, or proceeding, it shall be sufficient to refer to it as "The Associations Incorporation Act, 1858." Short title of Act.

SCHEDULES REFERRED TO.

A

I, \_\_\_\_\_ of \_\_\_\_\_, sole trustee or one of the trustees (*as the case may be*), of (*here set out name or style of institution*), do hereby give notice that I am desirous that such (*institution, church, or otherwise, as the case may require*) should be incorporated under the provisions of the Associations Incorporation Act, 1858.

(Signature of Trustee.)

The following is a copy of the memorial intended to be filed in the Supreme Court under the provisions of the said Act. (*Here set out a copy of memorial as in Schedule B.*)

B

Memorial of (*here insert the name or style of the institution intended to be incorporated*), filed in pursuance of the Associations Incorporation Act, 1858.

1. Name of the institution.
2. Object or purpose of the institution.
3. Where situated or established.
4. The name or names of the trustee or trustees.
5. In whom the management of the institution is vested, and by what means—whether by deed of settlement or otherwise.

C

I, \_\_\_\_\_, Master of the Supreme Court of South Australia, do hereby certify that (*here insert the name or style of the institution*) is registered under the provisions of the Associations Incorporation Act, 1858, the memorial required by law having been duly filed.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

(Signature of the Master.)

D

Memorial of the name and residence of the person authorized to use the common seal of (*here insert the name or style of the institution*) incorporated under the provisions of the Associations Incorporation Act, 1858.

Name of person.	Place of abode.	Occupation or quality.	Impression of seal.

(Signature of the person authorized to use seal.)

**E**

Memorial of the real estate vested in the trustees of required to be registered under the provisions of the Associations Incorporation Act, 1858.

Name or Names of Trustees.	Name or Designation of Incorporated Institution.	Description of Property and nature of Tenancy.

I (*or we*) do hereby declare that, to the best of my (*or our*) knowledge and belief, the above memorial contains a true statement of the names of the trustees (*or name of the trustee*) in whom the real estate of the said institution was vested, and also a true description of all such real estate.

**F**

The following fees shall be payable in respect of the several matters and things herein mentioned:—

	£	s.	d.
For every search at the Supreme Court for documents filed ..	0	2	6
For filing any document .. .. .	0	2	6
For a certificate of registration .. .. .	2	0	0

TABLE OF FEES (Continued).

	£	s.	d.
If either of the above orders exceed five folios, for each additional folio .....	0	2	0
Entering any minute, order, or decree in the Court-book, other than the decrees or orders before specified .....	0	2	6
On withdrawal of a cause after same is set down for hearing, to be paid by the party at whose instance it is withdrawn .....	0	5	0
On the hearing or trial of a cause—			
From the plaintiff .....	1	0	0
From the defendant or defendants .....	0	15	0
If the hearing or trial continues more than one day, for each day—			
From the plaintiff .....	0	10	0
From the defendant or defendants .....	0	10	0
Producing the Judge's notes .....	0	5	0
Bill of exceptions signed by the Judge .....	0	5	0
Entering on the record the finding of the Jury or the decision of the Judge .....	0	5	0
On every subpoena .....	0	2	6
On a certificate under the hand of the Judge .....	0	2	6
On every commission issuing under seal of the Court .....	1	0	0
Writ of attachment .....	0	7	6
Writ of sequestration .....	1	0	0
On lodging instrument of appeal .....	0	10	0
Search in Court-books, if within the last two years .....	0	1	0
If at an earlier period, that within two years .....	0	2	6
In case the Court-books to be searched or the documents required are not in the Office, in addition to the above .....	0	2	6
Filing and entry of remission of appeal .....	0	10	0
Filing exhibits, not exceeding ten for each exhibit .....	0	1	0
Exceeding ten, but not exceeding twenty .....	0	10	0
Exceeding twenty, but not exceeding fifty .....	0	15	0
Exceeding fifty .....	1	0	0
Office copies of minutes, orders or decrees, Judge's notes, or other documents filed in a cause—			
If five folios of seventy-two words or under .....	0	2	6
If exceeding five folios of seventy-two words, per folio .....	0	0	6
In case the same are under seal of the Court, in addition for the seal .....	0	5	0
Filing every affidavit or other document brought into Court or deposited in the Office, for filing which no fee is before specified .....	0	2	6
Taxing every bill of costs—			
If three folios of seventy-two words or under .....	0	2	6
If exceeding three folios of seventy-two words—			
When taxed as between party and party, per folio .....	0	0	6
When taxed as between practitioner and client, per folio ..	0	1	0
For administering oaths, to each deponent .....	0	1	0
Examiner appointed to take evidence under a commission for examination of witnesses, for each day's attendance, besides travelling expenses .....	3	3	0

These Rules are to take effect from and after the first day of June next.

Given under our hands, and the seal of the Supreme Court, this nineteenth day of April one thousand eight hundred and fifty-nine.

(L.S.)

CHARLES COOPER, C. J.  
B. BOOTHBY, J.  
E. CASTRES GWYNNE, J.