

No. 5 of 1991.

Evangelical Lutheran Church of Papua New Guinea Act 1991.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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SCHEDULE 1

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Evangelical Lutheran Church of Papua New Guinea Act 1991,

Being an Act to incorporate the Evangelical Lutheran Church of Papua New Guinea, to repeal the *Evangelical Lutheran Church of New Guinea Property Trust Act* (Chapter 1007), and to make provision for and in relation to the assets and liabilities of the Evangelical Lutheran Church of New Guinea Property Trust, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. **INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**Bishop**” means an ordained Pastor of the Church elected by a duly convened Synod to serve as Head of the Church and to exercise oversight of the confessions and the objects of the Church as specified by this Act, the Constitution and the by-laws;

“**Assistant to the Bishop**” means an ordained Pastor of the Church designated to assist the Bishop;

“**Boards**” means the Boards established under the Constitution of the Church, being the Evangelism, Ministerial Training, Education, Health Services, Finance and Development Services Boards, Lands and Properties or such other Boards as the Church may establish from time to time;

“**Church**” means the religious organisation known as the Evangelical Lutheran Church of Papua New Guinea;

“**Church Congregation**” means the whole of the members of a particular congregation of the Church who come to worship at that Church or

whose names are for the time being on the roll of that particular congregation;

“Church Instrumentality” means any Congregation, Parish, Circuit, District, Board or Department of the Church in Papua New Guinea and includes—

- (a) any society, auxiliary or other committee of the Church; and
- (b) any school, college, hospital or other religious, charitable, philanthropic, educational, social, commercial or professional institution, organisation, enterprise, undertaking or other activity conducted or controlled by the Church or by a congregation, district or department of the Church; and
- (c) any fund, trust or foundation created and controlled or administered by the Church or by any congregation, parish, circuit, District or Department of the Church;

“Church Property” means any property vested in the Church;

“Circuit” means a group of congregations in an area determined by the Church;

“Circuit Council” means a Council appointed by a meeting of the Circuit Conference;

“Council” means the National Church Council established in Section 4;

“Constitution” means the Constitution of the Church, its rules and by-laws as promulgated, amended and adopted from time to time;

“District” means a group of circuits and/or congregations and/or parishes in a given geographical area, as determined by the Synod from time to time;

“Head Office” means the place appointed by the Synod from time to time as head office of the Church;

“flag” means a flag carrying the logo and identifying characteristics of the Church as adopted by the Synod from time to time;

“logo” means the logotype which is used as the emblem of the Church as determined from time to time by the Synod;

“District Council” means a Council comprising the representative appointed by the circuits and/or parishes and/or congregations in accordance with the Church Constitution;

“Model Constitution” means the Constitution of the Incorporated Church Instrumentalities, as approved by the Church Council;

“Parish” means a congregation or a group of congregations serving an entity which is served by one or more pastors;

“property” includes any estate, right, title and interest, legal or equitable, in or to any property;

“Property Trust” means the Evangelical Lutheran Church of New Guinea Property Trust established by the *Evangelical Lutheran Church of New Guinea Property Trust Act* (Chapter 1007);

“Public Officer” in relation to the Church means the Public Officer of the Church appointed under Section 8 by the Council;

“Secretary” means the General Secretary of the Church;

“Synod” means a meeting of officials, officers and delegates duly called together as a synod in accordance with the Constitution of the Church;

“the Repealed Act” means the *“Evangelical Lutheran Church of New Guinea Property Trust Act* (Chapter 1007)” as amended to date.

2. INCORPORATION.

(1) The Church is hereby established as a corporation by the name of “The Evangelical Lutheran Church of Papua New Guinea”.

(2) The Corporation—

- (a) has perpetual succession; and
- (b) shall have a seal; and
- (c) may sue and be sued in its corporate name; and
- (d) may do and suffer all such other acts and things as corporations may by law do and suffer; and
- (e) has the power to promulgate, amend, adopt, create and otherwise devise a Constitution including Rules and by-laws.

3. CHURCH PROPERTY.

Church Property shall be managed and administered on behalf of the Church by a Council to be known as the “Evangelical Lutheran Church National Council” and the Council may exercise all the powers of the Church in relation thereto.

4. CONSTITUTION OF THE COUNCIL.

(1) The Council shall consist of—

- (a) the Bishop of the Church; and
- (b) the Assistant to the Bishop of the Church; and
- (c) the President of each District; and
- (d) other Members of the Church appointed by the Synod and as specified by the Constitution and by-laws.

(2) The Bishop of the Church shall be the Chairman of the Council and the Assistant to the Bishop shall serve as Assistant Chairman.

(3) The members of the Council referred to in Subsection (1)(c) and (d) shall retire from office and may be eligible for re-election, in accordance with the Church Constitution.

5. CASUAL VACANCIES.

The office of a member of the Council shall be deemed to have become vacant if the member—

- (a) dies; or
- (b) resigns his membership by notice in writing to the Council; or
- (c) becomes bankrupt or makes an arrangement or composition with his creditors generally; or
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the *Public Health Act 1973*; or
- (e) is removed from membership of the Council by resolution of the Council or Synod.

6. APPOINTMENTS TO VACANCIES.

(1) The continuing or surviving members of the Council may act notwithstanding any vacancy or vacancies in their number.

(2) The continuing or surviving members may appoint a person to fill a casual vacancy in the membership of the Council, but need not do so unless the number of continuing members is less than 10.

(3) A person appointed under Subsection (2) holds office according to terms set by the Constitution and by-laws.

7. PROCEDURES OF THE COUNCIL.

(1) The Council may regulate its proceedings as it thinks proper and may appoint such officers as it thinks necessary for the proper administration of affairs relating to Church property.

(2) The Chairman, or in his absence, the Assistant Chairman, shall preside at all meetings of the Council.

(3) Ten (10) members are a quorum for a meeting of the Council.

(4) All questions arising at a meeting of the Council shall be decided by a majority of the votes of the members of the Council present and voting, and in the event of an equality of votes, the Chairman has a casting, as well as a deliberative vote.

8. PUBLIC OFFICER.

The Council shall appoint a member of the Church to be the Public Officer of the Church and that person shall exercise all the functions and responsibilities of a Public Officer of a Company incorporated under the *Companies Act 1997*.

9. REPEAL.

The Act specified in Schedule 1 is repealed.

10. SAVING OF CONTRACTS.

All Contracts, Agreements, Conveyances, Deeds, Leases, Licences and other instruments or undertakings entered into by, made with or addressed to the Property Trust (whether alone or with any other person) before the date of commencement of the Act and in effect immediately before that date shall, on and after that day, to the extent that they were previously binding on and enforceable against or in favour of the Property Trust, be binding on and of full force and effect in every respect or in favour of the Church as fully and effectually as if instead of the Property Trust the Church had been a party to them or bound to them or entitled to the benefit of them.

11. ACTION ETC., NOT TO ABATE.

Where immediately before the date of commencement of this Act any action, arbitration or proceeding or any cause of action, arbitration or proceeding was pending or existing by, against or in favour of the Property Trust it does not abate and is not discontinued or in any way affected by the commencement of this Act but shall be prosecuted, continued and enforced by against or in favour of the Church as if the Church had been the original party.

12. SEAL OF THE CORPORATION.

(1) The Seal of the Corporation shall not be affixed to an instrument except in the presence of persons duly authorized by resolution of the Council to witness the affixing of the Common Seal generally.

(2) An instrument to which the Seal is affixed shall be signed by not less than two such persons duly authorized by such resolution of the Council and no persons shall be concerned to enquire whether the persons signing it are duly appointed by the Council.

(3) The Seal shall remain in the custody of the Secretary.

13. CONSTITUTION.

The Constitution of the Church shall be as promulgated, amended and adopted from time to time by the Council or Synod including its rules and by-laws and shall provide for the management, appointment of officers, duties and other such powers as from time to time the Council or Synod shall adopt.

14. MANAGEMENT.

(1) The Synod, the Council and unincorporated Church Instrumentalities shall conduct themselves in accordance with the Constitution of the Church.

(2) The incorporated Church Instrumentalities shall conduct themselves in the first instance in accordance with the Constitution of the Church and in the second instance in accordance with their individual Model Constitutions and in the case of conflict the Constitution of the Church shall prevail.

15. MODEL CONSTITUTION.

The Council may adopt a Model Constitution for adoption by any Church Instrumentality desiring to apply for incorporation under any law of Papua New Guinea.

16. APPLICATION TO USE MODEL CONSTITUTION.

(1) Any Church Instrumentality desiring to apply for incorporation under any law of Papua New Guinea may apply to the Council for approval to adopt the Model Constitution as its Constitution.

(2) An application to the Council under the preceding subsection shall be considered by the Council at its next meeting, and the Secretary shall immediately notify the applicant of the Council's decision.

(3) The decision of the Council on hearing an application under Subsection (1) shall be final.

17. DISQUALIFICATION FROM MEMBERSHIP OF CHURCH.

(1) Any Church Instrumentality that applies for incorporation under a law of Papua New Guinea, which has not applied for and obtained the approval of the Council to adopt the Model Constitution, or which applies for incorporation without having agreed to adopt the Model Constitution may, at the discretion of the Council, cease to be a Church Instrumentality, for the purposes of this Act.

(2) Any member of any Church Instrumentality which ceases to be a Church Instrumentality for the purposes of this Act, pursuant to Subsection (1), shall immediately cease to be a member of the Church, if he becomes a member of the incorporated body which comes into being on the application of the Church Instrumentality.

18. DEVICES, GIFTS, ETC., TO CHURCH.

(1) Where by a will, deed or other document or instrument, any property—

(a) has been or shall be devised, bequeathed, given, granted, leased, conveyed, transferred, assigned or appointed to, or has been or shall be declared or directed to be held on trust for or for the benefit of—

(i) the Church; or

- (ii) an unincorporated Church Instrumentality; or
- (iii) in respect of the work in Papua New Guinea of—
 - (A) Lutheran Mission New Guinea; or
 - (B) the Lutheran Mission; or
 - (C) the Australia Lutheran Mission; or
 - (D) the Lutheran Church; or
 - (E) New Guinea Mission; or
- (iv) the Property Trust; or

- (b) has been or shall be devised, bequeathed, given, granted, leased, conveyed, transferred, assigned or appointed to or has or shall be declared or directed to be held on trust for the religious, social, educational or charitable work of the Church,

the will, deed or other document or instrument takes effect as if the Church had been named in it as devisee, legatee, donee, grantee, releasee, conveyee, transferee, assignee, appointee or beneficiary, as the case requires.

(2) Where any property would, but for this Act, be receivable or recoverable by or payable to—

- (a) an unincorporated Church Instrumentality, or
- (b) an officer or official of the Church for the benefit of, or on behalf of, the Church; or
- (c) in respect of the work in Papua New Guinea of a body referred to in Subsection (1)(a)(iii); or
- (d) the Property Trust,

the property is receivable or recoverable by, or is payable to, the Church.

(3) Where any property would, but for this Act, become vested in—

- (a) an unincorporated Church Instrumentality; or
- (b) a body referred to in Subsection (1)(a)(iii), for or on behalf of the Church in Papua New Guinea; or
- (c) any person for or, on behalf of, or, in trust for—
 - (i) the Church; or
 - (ii) in respect of a body referred to in Subsection (1)(d)(iii); or
- (d) the Property Trust,

otherwise than in a manner set out in Subsection (1) or (2), the property vests in the Church.

(4) Notwithstanding anything in any will, deed, document or instrument, where any property passes to or vests in the Church by virtue of Subsection (1), (2) or (3) an acknowledgement or receipt of the Church—

(a) executed under its seal; or

(b) in writing signed by—

(i) the Secretary of the Church; or

(ii) a person duly authorized under a Power of Attorney given by the Church,

is a sufficient discharge to the person liable to pay, deliver, grant, release, convey, transfer, assign or otherwise dispose of the property.

(5) Where property vests in or is received or recovered by or paid to the Church under Subsection (1), (2) or (3) the property shall be held and dealt with by the Church on and subject to the trusts and conditions made concerning it in any relevant will, deed, or other document or instrument or at the time of receipt, recovery, payment or vesting, so far as they are valid and capable of taking effect and are not varied under this Act.

(6) Where any property vested in the Church by virtue of this Section is land registered under the *Land Registration Act 1981*, the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the Church, enter or register the Church in the Register book or in the Register of State Leases kept evidencing the title of the Church to the land as the owner of the land within the meaning of that Act.

(7) No vesting by virtue of this Act shall affect any encumbrance, lien, estate or interest to which at the time of the vesting the property so vested was subject in the hands of the persons from whom it was vested.

(8) Where by virtue of Section 16 a District becomes incorporated pursuant to the provisions of the *Associations Incorporation Act 1966*, such real property as approved by the Council and being in the geographical area of the District as is vested in the Church shall be transferred to or registered in the corporate names of that District and the Church as joint tenants.

(9) Any property which immediately before the commencement of this Act was vested in the unincorporated body known as the Evangelical Lutheran Church of Papua New Guinea is by virtue of this Act and without the necessity of any formal Deed of Assurance divested from the Evangelical Lutheran Church of Papua New Guinea and vested in the Church.

(10) Where by virtue of this Act or otherwise property is vested in a corporate district the property shall vest in the District as sole proprietor.

(11) Whether by virtue of this Act or otherwise property is vested in the Church or in incorporated District on trust for or to be applied for some particular purpose of the Church, and—

- (a) it is impossible, impracticable or inexpedient to carry out the purpose; or
- (b) the amount available is inadequate to carry out the purposes; or
- (c) the purpose has already been effected; or
- (d) the purpose is illegal, useless or uncertain; or
- (e) the property or any income that has accrued or will accrue from the property is more than is necessary for the purpose,

then notwithstanding any rule of law or equity to the contrary the Council may, on application by the Church or an incorporated District made in such manner as the Council prescribes, resolve that the whole or any part of the property or of the income from the property, or of the proceeds of the sale of the property (as the case may be), be applied to some other purpose of the Church or to a combination of several such purposes in such manner as it directs.

19. EXTENSION OF TRUST.

(1) In this Section “**prescribed**” means prescribed by the Synod or the Council.

(2) Where—

- (a) by virtue of this Act or otherwise property is vested in the Church of an incorporated District on trust for, or to be applied in or for, any of the particular purposes of the Church or of an incorporated District; and
- (b) the administration of the property or the carrying out of the trust can be facilitated—
 - (i) by extending or varying the powers of the Church or the incorporated District as the trustee; or
 - (ii) by prescribing or varying the mode of administering the trust,

the Synod or Council may, on application by an incorporated District made in the prescribed manner resolve that the powers of the Church or the incorporated District as the trustee shall be extended or varied or the mode of administering the trust shall be prescribed or varied, in such manner as it directs.

20. EFFECT OF RESOLUTIONS UNDER SECTION 18 OR 19.

(1) Where the Synod or the Council makes a resolution in accordance with Section 19(2), the property to which the resolution refers, is, subject to the trusts mentioned in the resolution, freed and discharged from the trusts to which it was subject before the passing of the resolution.

(2) Where the Synod or the Council makes a resolution in accordance with Section 18, the Church or the incorporated District in relation to the property referred to in the property in such manner, as is provided for in the resolution.

21. POWERS OF CHURCH.

The powers of the Church relating to property may be exercised for and on its behalf by the Council subject to the control and direction of the Synod, and those powers include the power in the name of the Church—

- (a) to acquire, hold, manage and control, and grant, transfer, mortgage, demise, sell, surrender, dispose of, create trusts or create or reverse easements in or over or otherwise deal with property of any kind; and
- (b) to establish and support, or to aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees, or the dependants or connects of any such persons, to grant pensions and allowances, and to make payments towards insurance; and
- (c) to borrow or raise or secure the payment of money in such manner as the Church thinks proper, to secure such money or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Church in any way, and to purchase, redeem and pay off any such securities; and
- (d) to take or hold mortgages, liens and charges to secure payment of the purchase price or any part of the purchase price of any Church property sold by the Church, or any money due to the Church; and
- (e) to enter into partnership or into an arrangement for sharing of income, union of interest, co-operation, joint venture or reciprocal concession, or otherwise, with any person carrying on or engaged in or about to carry on or engage in any business or transaction that is capable of being conducted so as directly or indirectly to benefit and further the purposes and work of the Church; and
- (f) to carry on any business that seems to the Council capable of being conveniently carried on by the Church and calculated directly or indirectly to benefit and further the purposes and work of the Church; and
- (g) to adopt such means of making known and advertising the purposes and work of the Church and any business carried on by the Church as seem expedient; and
- (h) in relation to any Church property vested in it—
 - (i) to improve, manage, develop, turn into account or otherwise deal with or dispose of all or any of the property; and
 - (ii) to sell any asset or assets or any property or any part thereof, be it together or in parcels, by public auction or private contract, for cash or on credit, or on such terms and subject to such conditions as the Council thinks advisable; and
 - (iii) to exchange the property or any part of it for property; and

- (iv) to transfer and assure the property when sold or exchanged or otherwise dealt with or disposed of to the purchaser or to the person taking it, freed and discharged from any trusts affecting it in the hands of the Church; and
- (v) to demise, let, hire or loan the property or any part or parts of it for such periods, at such rents and on such terms and conditions as the Council thinks advisable; and
- (vi) to mortgage the property or any part of it, or otherwise give security over it, and for the purpose of any such mortgage or security to assure the property to the mortgagee and his assigns freed and discharged from any trusts affecting it in the hands of the Church; and
- (vii) to accept surrenders of leases on such terms and subject to such conditions as the Council thinks advisable; and
- (viii) to lend or advance money to any person, and to secure in any way the repayment of moneys lent or advanced to or the liabilities incurred by any person, and otherwise to assist any person; and
- (ix) to invest and deal with the money of the Church not immediately required including, in addition to any powers of investment conferred on trustees by law, taking or otherwise acquiring and holding shares, stocks, debentures, debenture stock, notes or other securities of any company or incorporated body or association and units of any fixed or flexible trust, and depositing money with any such company, incorporated body or association; and
- (i) to draw, make, accept, endorse, sign, discount, execute and issue cheques, drafts, promissory notes, bills of exchange, bills of lading, warrants, debentures or other negotiable or transferable instruments; and
- (j) to appoint by instrument under the seal of the Church, any person as the attorney of the Church, generally or in respect of specified matters, and to act in any place, and all deeds signed by the attorney on behalf of the Church and under this seal are binding on the Church and have the same as if they were under the seal of the Church; and
- (k) to do all or any of the things referred to in the preceding provisions of this Section in—
 - (i) any part of the world; and
 - (ii) as principal, agent, trustee or otherwise; and
 - (iii) by or through trustees or agents or otherwise; and
 - (iv) alone or in conjunction with others; and

- (l) to procure the Church to be registered or legalised at such places outside the country as the Council or Synod thinks proper; and
- (m) for all or any of the purposes referred to in this Section to sign, seal and execute all such transfers, contracts and other deeds, documents and instruments as are necessary; and
- (n) to do all such other things as in the opinion of the Synod or the Council are incidental or conducive to the purposes and work of the Church.

22. EXECUTION OF INSTRUMENTS.

An Agreement to contract relating to property or any matter that, if made between private persons, would by law be valid although made by parol only and not reduced to writing may be made, varied or discharged by parol in the name of or on behalf of the Church by any person acting with the express authority of the Church, but any contract relating to property or any matter shall be in writing.

23. RECEIPTS AND DISCHARGES.

A release or other discharge under the seal of the Church executed in accordance with this Act, or any other receipts—

- (a) under the seal of the Church; or
- (b) in writing signed under a power of attorney given by the Church; or
- (c) in writing signed by persons duly authorized by the Church that is given for any monies payable to or receivable by the Church is a sufficient discharge to any person paying money to the Church, from all further liability to pay the monies and from all liability to see to the application of the money.

24. LEGAL PROCEEDINGS AND SERVICE.

The service of any legal process on the Church may be effected by serving it on the Secretary of the Church or on any other person authorized by the Council to accept service of it.

25. INDEMNITY.

Each member of the Council and any person exercising any powers or duties in relation to the Church or Church property under this Act and his executors and administrators, is entitled to be indemnified out of Church property against all expenses or liabilities incurred by him in connection with the performance by him of any such power or duty.

26. SCHEMES OF CO-OPERATION.

(1) Where the Synod resolves that the Church shall enter into a scheme of co-operation with or involving other organisations or other Lutheran Churches in Papua

New Guinea or in other countries or Churches of other denominations, the Church may, for the purposes of such scheme and for so long as it continues—

- (a) permit any Church property to be used, managed or administered for the purposes of the scheme in such manner as the Council thinks proper or otherwise as the Council or Synod directs; and
- (b) join with any such other Church in acquiring the absolute or any limited interest in any property required for the purposes of any such scheme—
 - (i) hold it as co-owner with or otherwise in conjunction with the other Church in such manner as is mutually agreed between them; and
 - (ii) do all such acts and enter into and complete all such contracts, transfers, leases, deeds or other documents or instruments as are necessary or desirable to give effect to the acquisition; and
- (c) be a member of any association or organisation of Churches or Church representatives, or of other bodies (incorporated or unincorporated), the object or one of the objects of which is the acquiring, holding, using, managing or administering land or other property for the purposes of any such scheme.

(2) The power conferred by Subsection (1)(a) is not exercisable in respect of any Church property that is subject to a condition or other provision that expressly prohibits its use otherwise than solely for the purposes of the Church, but the fact that a condition or provision required any such property to be used in worship services of the Church or for purposes of the Church shall not, in itself, be deemed to subject that property to a condition or provision that it be used solely for the purposes of the Church.

27. RULES.

(1) The Council or Synod may make rules and by-laws, not inconsistent with this Act or any other law, to provide for any matter relating to or affecting the management and administration of Church property and for—

- (a) the regulation and control of the affairs and proceedings of the Council; and
- (b) the exercise of powers—
 - (i) by the Church or by members of the Council; or
 - (ii) by the Church Secretary; or
 - (iii) in the name and on behalf of the Council by a person who is not a member of the Council; and
- (c) the determination of application for membership of the Church and the conditions upon which membership of the Church may be granted, suspended, terminated or in any other way dealt with.

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(2) Any such rule takes effect without being published, from such date as the Council or Synod fixes.

(3) A certificate signed by the Bishop of the Church or the Secretary of the Church certifying that a rule contained in or attached to the certificate is a rule made under this Act, is conclusive evidence of the rule and of the due making and approval of it.

SCHEDULE 1

Sec. 9.

The Evangelical Lutheran Church of New Guinea Property Trust Act (Chapter 1007)

Office of Legislative Counsel, PNG