

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Nature Conservation Trust Act 2001*:

(a) to require the Nature Conservation Trust of New South Wales (***the Trust***) to establish and maintain a public fund, so that donations to the Trust for its principal purpose are eligible for tax deductible status under Commonwealth taxation law, and

(b) to clarify that the Trust has similar functions with respect to water as its functions with respect to land, including by authorising the Trust to deal in water access licences and similar entitlements, and

(c) to authorise the Trust to sell, without imposing a covenant, any part of land that it acquires that is unsuitable for conservation purposes, and

(d) to expressly permit Trust agreements to impose restrictions on the subdivision and other development of land, and

(e) to make further provision for the skills and experience required of non-government members of the Board of the Trust, and

(f) to provide for a further review of the Act in 5 years' time.

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The Bill also amends the *National Parks and Wildlife Act 1974* to make it clear that conservation agreements may make provision for the protection, conservation and management of waters (as well as land).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 February 2011.

Schedule 1 Amendment of Nature Conservation

Trust Act 2001 No 10

Establishment of public fund

The amendments require the Trust to establish and maintain a public fund for the principal purpose of the Trust. The public fund is to be called the Nature Conservation Trust of New South Wales Public Fund (the ***Public Fund***).

The amendments make it clear that the Trust has a single object, which is to protect and enhance natural heritage (including any cultural heritage associated with natural heritage). The object of the Trust is also its principal purpose.

The purpose of the amendments is to ensure that donations made to the Trust, for its principal purpose, are tax deductible under the *Income Tax Assessment Act 1997* of the Commonwealth (the ***Commonwealth Income Tax Assessment Act***). For donations to the Public Fund to have tax deductible status under the Commonwealth Income Tax Assessment Act, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment.

The amendments include a number of other provisions the object of which is to ensure that donations to the Trust for its principal purpose meet the requirements for tax deductible status. These include:

(a) a provision that makes it clear that the affairs of the Trust are to be conducted on a not-for-profit basis and that the Public Fund is not-for-profit, and

(b) a requirement that all gifts of money or property made to the Public Fund for the principal purpose of the Trust, or other contributions made in relation to fundraising events for that principal purpose, be held in the Public Fund and are used only for that principal purpose, and

(c) a requirement that the Trust not agree to any condition imposed on a gift to the Public Fund (so that a gift can be used only for the principal purpose of the

Trust, rather than on the basis of donor preferences), and
(d) a requirement that the Trust comply with any other requirements made of it under the Commonwealth Income Tax Assessment Act, including by complying with rules made under that Act and by providing statistical information about gifts or contributions made to the Public Fund, and
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(e) a requirement that, on a winding up of the Trust, all outstanding property held in the Public Fund is to be transferred to another fund with tax deductible status and a similar principal purpose.

The principal amendments described above are contained in **Schedule 1 [2], [6], [12], [17] and [22]**. **Schedule 1 [7]** makes changes to the functions of the Trust that are consequential on the new provisions relating to the Public Fund. **Schedule 1 [1]** inserts definitions used in the provisions. **Schedule 1 [11] and [12]** also replace the term “gift, devise or bequest” with the more general term “gift”, so that the new provision that prevents the Trust agreeing to a condition of a gift of money or property that is to be made to or held in the Public Fund will also apply to a devise or bequest, if the devise or bequest is a gift of money or property that must be held in the Public Fund under the Commonwealth Income Tax Assessment Act.

Schedule 1 [21] removes a provision made redundant by the amendments.

Schedule 1 [5] and [9] are consequential amendments.

As the Trust already maintains trust accounts, it is necessary to distinguish these accounts from the Public Fund. The amendment in **Schedule 1 [18]** renames the existing trust accounts as operating accounts and makes it clear that these accounts are to be kept separate from the Public Fund. The operating accounts can be used for the receipt of any money paid to the Trust that is not required to be held in the Public Fund (such as borrowings) and to meet its liabilities (for example, remuneration of Board members).

Water management

At present the Act gives the Trust certain functions in respect of land that is significant for the conservation of natural heritage. **Schedule 1 [1]** inserts a definition of *land* into the Act to make it clear that land includes water on or under the surface of land. Accordingly, any of the functions of the Trust with respect to land extend to water on or under the surface of land.

Schedule 1 [6] also includes a provision that makes it clear that any arrangements entered into by the Trust with landholders can include arrangements for the management and protection of waters that affect the natural heritage of land. This may include waters not actually situated on the land to which the agreement relates.

Schedule 1 [8] authorises the Trust to buy, acquire, sell, hold, create security interests in and otherwise deal in access licences and other entitlements with respect to water under the *Water Management Act 2000* and the *Water Act 1912*.

Schedule 1 [10] is a related amendment.

Use of covenants under revolving fund scheme

At present the Trust operates a revolving fund scheme. Under the scheme, the Trust purchases or acquires land that is significant for the conservation of natural heritage, arranges for a covenant to be registered on the title to the land that protects that heritage, and then sells or leases the land subject to the covenant.

Schedule 1 [4] will authorise the Trust to sell or lease part of any land acquired, without arranging for a covenant to be registered on the title to that part of the land,

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if the Trust decides that the part of the land concerned is of low or no conservation

value. **Schedule 1 [3]** is a related amendment.

Contents of Trust agreements

Schedule 1 [19] permits Trust agreements to contain provisions that restrict the development of land the subject of the agreement. Development is given the same meaning as it has in the *Environmental Planning and Assessment Act 1979*, which includes the use of land, the subdivision of land, the erection of buildings on land and the carrying out of work on land. At present, only restrictions on the use of the land are expressly permitted (however, agreements can provide for any matters which the parties consider appropriate). A related amendment in **Schedule 1 [20]** makes it clear that a Trust agreement can include provisions that require a landholder to refrain from carrying out specified actions (such as development).

Membership of Board of Trust

The requirements for membership of the Board of the Trust are modified, to make it clear that a non-government member must have skills and experience (rather than capacities) in one or more of the following areas:

- (a) increasing public knowledge, understanding and appreciation of the importance of natural and cultural heritage by private landholders and other community members,
- (b) protection and conservation of natural heritage,
- (c) protection and conservation of cultural heritage,
- (d) management of natural resources, including agricultural land,
- (e) land use planning and operation of local councils,
- (f) marketing and fundraising,
- (g) economics and financial management,
- (h) governance and administration,
- (i) decision making and leadership.

The principal amendment is **Schedule 1 [14]**. **Schedule 1 [13], [15], [16] and [24]** are related amendments.

Schedule 1 [25] repeals a provision that allows members of the Board to appoint deputies.

Review of Act

Schedule 1 [23] provides for a further review of the Act to be carried out 5 years after the date of assent to the proposed Act.

Savings and transitional

Schedule 1 [27] enables the making of savings and transitional regulations as a consequence of the amendments.

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Schedule 1 [28] inserts specific transitional provisions relating to the amendments.

Schedule 1 [26] is a consequential amendment.

Schedule 2 Amendment of National Parks and

Wildlife Act 1974 No 80

Schedule 2 [1] makes it clear that conservation agreements entered into under the *National Parks and Wildlife Act 1974* can contain provisions for the purpose of the protection, conservation or management of waters.

Schedule 2 [2] is a consequential amendment.