

Passed by both Houses



New South Wales

# Destination NSW Bill 2011

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
<b>Part 2 Constitution and management of Destination NSW</b>	
4 Constitution of Destination NSW	3
5 Status of Destination NSW	3
6 Ministerial control	3
7 Establishment of Board of Management	3
8 Board's role	3
9 Chief Executive Officer	4
10 Acting Chief Executive Officer	4
11 Staff of Destination NSW	4

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	Page	
<b>Part 3</b>	<b>Functions of Destination NSW</b>	
12	Principal object of Destination NSW	5
13	General functions of Destination NSW	5
14	Delegation of Destination NSW's functions	6
15	Exercise of functions through joint ventures etc	6
16	Acquisition of land	6
<b>Part 4</b>	<b>Miscellaneous</b>	
17	Act to bind Crown	7
18	Disclosure of information	7
19	Disclosure of pecuniary interests	7
20	Personal liability	9
21	Proceedings for offences	9
22	Regulations	9
23	Review of Act	9
<b>Schedule 1</b>	<b>Members and procedure of Board of Management of Destination NSW</b>	10
<b>Schedule 2</b>	<b>Savings, transitional and other provisions</b>	13
<b>Schedule 3</b>	<b>Amendment of other Acts</b>	15
<b>Schedule 4</b>	<b>Repeal of Tourism New South Wales Act 1984 No 46</b>	16

*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2011*



New South Wales

## **Destination NSW Bill 2011**

Act No , 2011

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An Act to constitute and confer functions on Destination NSW; and for other purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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Clause 1            Destination NSW Bill 2011

Part 1             Preliminary

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**The Legislature of New South Wales enacts:**

## **Part 1    Preliminary**

### **1    Name of Act**

This Act is the *Destination NSW Act 2011*.

### **2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3    Definitions**

(1) In this Act:

***Board*** means the Board of Management of Destination NSW established under Part 2.

***Chief Executive Officer*** means the Chief Executive Officer of Destination NSW.

***Destination NSW*** means Destination NSW constituted under Part 2.

***function*** includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

(2) Notes included in this Act do not form part of this Act.

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## **Part 2 Constitution and management of Destination NSW**

### **4 Constitution of Destination NSW**

There is constituted by this Act a body corporate with the corporate name of Destination NSW.

### **5 Status of Destination NSW**

Destination NSW is, for the purposes of any Act, a NSW Government agency.

### **6 Ministerial control**

Destination NSW is subject to the control and direction of the Minister in the exercise of its functions.

### **7 Establishment of Board of Management**

- (1) There is to be a Board of Management of Destination NSW.
- (2) The Board is to consist of the following members:
  - (a) a person appointed by the Minister as the Chairperson of the Board,
  - (b) such other persons with relevant skills and experience as are appointed by the Minister,
  - (c) the Chief Executive Officer,
  - (d) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services or a person nominated by the Director-General.

**Note.** Schedule 1 contains provisions relating to the members and procedure of the Board.

- (3) The Board may establish committees to give advice and assistance to the Board in connection with any particular matter or function of the Board. It does not matter that some or all of the members of any committee are not members of the Board.

### **8 Board's role**

- (1) All decisions relating to the functions of Destination NSW are to be made by or under the authority of the Board, but subject to any direction of the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, Destination NSW by or under the authority of the Board is taken to have been done by Destination NSW.

- (3) The Board must give the Minister any information about the exercise of the functions of Destination NSW that the Minister requests.

#### **9 Chief Executive Officer**

- (1) The Minister may appoint a Chief Executive Officer of Destination NSW.
- (2) The employment of the Chief Executive Officer is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 1A of that Act.
- (3) The Chief Executive Officer is responsible for the day to day management of the operations of Destination NSW in accordance with the directions of the Board.

#### **10 Acting Chief Executive Officer**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive Officer during the illness or absence of the Chief Executive Officer (or during a vacancy in the office of Chief Executive Officer) and the person, while so acting, has all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer.
- (2) The Minister may, at any time, remove a person from office as acting Chief Executive Officer.
- (3) An acting Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

#### **11 Staff of Destination NSW**

- (1) Destination NSW may arrange for the use of the services of any staff (whether by way of secondment or otherwise) or of any facilities of any government agency to enable Destination NSW to exercise its functions.
- (2) Destination NSW cannot employ any staff.

**Note.** Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable Destination NSW to exercise its functions. Under section 4K of that Act, a reference in this Act to a member of staff of Destination NSW is a reference to staff so employed or to persons of whose services Destination NSW makes use.

## **Part 3 Functions of Destination NSW**

### **12 Principal object of Destination NSW**

The principal object of Destination NSW is to achieve economic and social benefits for the people of New South Wales through the development of tourism and the securing of major events.

### **13 General functions of Destination NSW**

- (1) Destination NSW has the following functions:
  - (a) to market and promote New South Wales as a tourist destination and as a destination for the hosting of major events,
  - (b) to promote travel to and within New South Wales,
  - (c) to promote major events,
  - (d) to identify, attract and procure major events for New South Wales,
  - (e) to develop tourism ventures,
  - (f) to implement strategic plans, as approved by the Minister from time to time, relating to the development of tourism and the procurement of major events,
  - (g) to prepare, at least 3 months before the beginning of each financial year of Destination NSW, a corporate and business plan for the financial year for approval by the Minister,
  - (h) to prepare, on such occasions as the Board requires, an operational plan for approval by the Board,
  - (i) to construct, establish, maintain and operate tourist facilities,
  - (j) to establish, maintain and conduct enterprises relating to tourism,
  - (k) to provide travel and information services relating to tourism,
  - (l) to market travel and related services,
  - (m) to carry out (or arrange for the carrying out of) research in relation to tourism and major events.
- (2) Destination NSW has such other functions as are conferred or imposed on it by or under this or any other Act.
- (3) Destination NSW may exercise its functions within or outside New South Wales.
- (4) A reference in subsection (1):
  - (a) to New South Wales includes a reference to any part (such as a region) of New South Wales, and

- (b) to a major event includes a reference to an event that is expected to provide significant economic or cultural benefits to New South Wales or any part of New South Wales.

**14 Delegation of Destination NSW's functions**

- (1) Destination NSW may delegate to an authorised person any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by Destination NSW if the delegate is authorised in writing to do so by Destination NSW.
- (3) In this section, *authorised person* means:
  - (a) the Chief Executive Officer, or
  - (b) a member of the staff of Destination NSW, or
  - (c) a person, a committee of persons or a person of a class approved by the Minister or prescribed by the regulations.

**15 Exercise of functions through joint ventures etc**

Any function of Destination NSW may be exercised:

- (a) by Destination NSW itself, or
- (b) by Destination NSW in a partnership, joint venture or other association with public or local authorities or other persons or bodies.

**16 Acquisition of land**

- (1) Destination NSW may, for the purpose of providing any site to facilitate the development of tourism, acquire land by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be an authorised work and Destination NSW is, in relation to that authorised work, taken to be the Constructing Authority.
- (3) Sections 34–37 of the *Public Works Act 1912* do not apply in relation to works constructed under this Act.



## Part 4 Miscellaneous

### 17 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 18 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement made under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 10 penalty units.

### 19 Disclosure of pecuniary interests

- (1) In this section:

**Board member** means the Chairperson or other member of the Board.

- (2) If:

- (a) a Board member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
- (b) the interest appears to raise a conflict with the proper performance of the Board member's duties in relation to the consideration of the matter,

the Board member must, as soon as possible after the relevant facts have come to the Board member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (3) If:

- (a) the Chief Executive Officer has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Chief Executive Officer in connection with his or her functions (otherwise than at a meeting of the Board), and

- (b) the interest appears to raise a conflict with the proper performance of the Chief Executive Officer's duties in relation to the consideration of the matter,
- the Chief Executive Officer must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Minister.
- (4) A disclosure by a Board member at a meeting of the Board that the Board member, or by the Chief Executive Officer to the Minister that the Chief Executive Officer:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this section.
- (5) Particulars of any disclosure made under this section must be recorded by Destination NSW in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person.
- (6) After a Board member has disclosed the nature of an interest in any matter, the Board member must not, unless the Minister or the Board otherwise determines:
- (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.
- (7) For the purposes of the making of a determination by the Board under subsection (6), a Board member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Board for the purpose of making the determination, or
  - (b) take part in the making by the Board of the determination.
- (8) After the Chief Executive Officer has disclosed the nature of an interest in any matter to the Minister, the Chief Executive Officer must not, unless the Minister otherwise determines, exercise his or her functions with respect to the matter.
- (9) A contravention of this section does not invalidate any decision of the Board or the Chief Executive Officer.

**20 Personal liability**

A matter or thing done or omitted to be done by:

- (a) Destination NSW, or
- (b) the Board, or
- (c) the Chief Executive Officer, or
- (d) a person acting under the direction of Destination NSW, the Board or the Chief Executive Officer,

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a member of the Board, the Chief Executive Officer or a person so acting personally to any action, liability, claim or demand.

**21 Proceedings for offences**

Proceedings for an offence under this Act may be taken before the Local Court.

**22 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**23 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Members and procedure of Board of Management of Destination NSW**

### **Part 1 Preliminary**

#### **1 Definitions**

In this Schedule:

*appointed member* means a member of the Board who is appointed by the Minister.

*Chairperson* means the Chairperson of the Board.

*member* means an appointed or ex-officio member of the Board.

### **Part 2 Members**

#### **2 Terms of office of appointed members**

Subject to this Schedule, an appointed member holds office for the period (not exceeding 5 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **3 Remuneration of appointed members**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

#### **4 Vacancy in office of appointed member**

- (1) The office of an appointed member becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

#### **5 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **6 Effect of certain other Acts**

(1) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **Part 3 Procedure**

#### **7 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

#### **8 Quorum**

The quorum for a meeting of the Board is a majority of the members for the time being.

#### **9 Presiding member**

(1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.

- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**10 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**11 First meeting**

The Chairperson may call the first meeting of the Board in such manner as the Chairperson thinks fit.

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## Schedule 2 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definitions

In this Part:

**former corporation** means Tourism New South Wales constituted under the *Tourism New South Wales Act 1984* as in force immediately before its repeal by this Act.

**repeal date** means the date on which the *Tourism New South Wales Act 1984* is repealed by this Act.

#### 3 Abolition of former corporation

- (1) On the repeal date:
  - (a) the former corporation is abolished, and
  - (b) each person appointed as a member of the former corporation ceases to hold office as such a member (but is eligible to be appointed as a member of the Board of Management of Destination NSW), and

- (c) any assets, rights and liabilities of the former corporation become the assets, rights and liabilities of Destination NSW.
- (2) A person who ceases to hold office as a member of the former corporation is not entitled to any remuneration or compensation because of the loss of that office.
- (3) In this clause:
- assets* means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.
- liabilities* means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).
- rights* means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).

#### **4 First corporate and business plan**

Destination NSW is to prepare its first corporate and business plan within the period approved by the Minister for the purposes of this clause.

#### **5 Tourism Development Fund**

On the repeal date:

- (a) the Tourism Development Fund is abolished, and
- (b) any balance standing to the credit of that Fund is transferred to the Consolidated Fund.

#### **6 References to Tourism New South Wales**

A reference in any other Act, or in any instrument of any kind (including any contract or agreement) to Tourism New South Wales is to be construed as a reference to Destination NSW.



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## **Schedule 3      Amendment of other Acts**

### **3.1    Public Finance and Audit Act 1983 No 152**

#### **Schedule 2 Statutory bodies**

Insert in alphabetical order:

Destination NSW

### **3.2    Public Sector Employment and Management Act 2002 No 43**

#### **[1]    Schedule 1 Divisions of the Government Service**

Omit the matter relating to the Tourism New South Wales Division from Part 3.

Insert instead in alphabetical order of Divisions:

Destination NSW Division (limited to staff employed with the approval of the Minister administering the <i>Destination NSW Act 2011</i> )	Director-General of the Department of Trade and Investment, Regional Infrastructure and Services
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#### **[2]    Schedule 2 Executive positions (other than non-statutory SES positions)**

Omit “General Manager of Tourism New South Wales” from Part 2.

Insert instead “Chief Executive Officer of Destination NSW”.

Destination NSW Bill 2011

Schedule 4 Repeal of Tourism New South Wales Act 1984 No 46

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**Schedule 4 Repeal of Tourism New South Wales Act  
1984 No 46**

The *Tourism New South Wales Act 1984* is repealed.