

**NATIONAL TRUST OF AUSTRALIA (NEW SOUTH WALES)
ACT 1990 No. 92**

NEW SOUTH WALES



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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD

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**NATIONAL TRUST OF AUSTRALIA (NEW SOUTH WALES)
ACT 1990 No. 92**

NEW SOUTH WALES



Act No. 92, 1990

An Act to make further provision with respect to the constitution, objects and functions of The National Trust of Australia (New South Wales); to repeal The National Trust of Australia (New South Wales) Act 1960; and for related purposes. [Assented to 7 December 1990]

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the National Trust of Australia (New South Wales) Act 1990.

Commencement

2. (1) This Act (section 39 and Schedule 2 excepted) commences on a day or days to be appointed by proclamation.

(2) Section 39 and Schedule 2 commence on the date of assent.

Definitions

3. (1) In this Act:

“**Board**” means the board of directors of the Trust;

“**director**” means any director of the Board (including the Executive Director);

“**Executive Director**” means the executive director of the Board;

“**rules**” means rules made by the Trust and in force under this Act;

“**special resolution**” means a resolution of the Board:

(a) passed at a meeting of the Board of which not less than 21 days’ written notice specifying the intention to propose the resolution as a special resolution has been duly given to all directors of the Board; and

(b) passed by a majority of not less than three-quarters of the directors of the Board present and entitled to vote at the meeting;

“**Trust**” means The National Trust of Australia (New South Wales) established by this Act.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—THE NATIONAL TRUST**Establishment of the Trust**

4. (1) There is established by this Act a body corporate to be called The National Trust of Australia (New South Wales), consisting of the persons who under the rules are members of the Trust.

(2) The Trust is a continuation of, and the same legal entity as, The National Trust of Australia (New South Wales) constituted under The National Trust of Australia (New South Wales) Act 1960.

(3) The Trust is to be considered to be a statutory body and a statutory corporation for the purposes of the Interpretation Act 1987 but does not represent the Crown.

(4) Nothing in this Act is to be taken to constitute the Trust as a company for the purposes of any law, or previous law, of the State relating to companies.

Objects of the Trust

5. The objects of the Trust are:

- (a) to acquire, control, maintain, protect and preserve for the benefit of the public generally land, buildings, works, structures and articles, of beauty or of national, historical, antiquarian, scientific, artistic, architectural or cultural interest (including Aboriginal relics, Aboriginal rock carvings and Aboriginal rock paintings and archaeological sites); and
- (b) to protect and preserve the natural features of, and to conserve the fauna and flora on, any land referred to in paragraph (a) and acquired by or under the control of the Trust; and
- (c) to encourage and promote, by any means whatever, public appreciation, knowledge and enjoyment of, respect for, and interest in, any land, buildings, works, structures or articles referred to in paragraph (a); and
- (d) to provide and improve amenities on and access to any land, buildings, works and structures referred to in paragraph (a) and acquired by or under the control of the Trust; and
- (e) to co-operate with any corporation, body or society, either within or outside New South Wales, having objects wholly or substantially similar to the objects of the Trust, in promoting the objects of such corporation, body or society or the Trust.

Powers etc. of the Trust**6. The Trust:**

- (a) has perpetual succession; and
- (b) is to have a seal; and
- (c) may take proceedings and be proceeded against in its corporate name; and
- (d) may, for the purpose of enabling it to carry into effect or promote its objects, borrow money either with or without security, and purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the carrying into effect or promotion of its objects.

Seal of the Trust

7. (1) The seal of the Trust is to be kept by the Executive Director and is to be affixed to a document only:

- (a) in the presence of the Executive Director and one other director or in the presence of any 3 directors; and
- (b) with an attestation by the signatures of those directors of the fact of the affixing of the seal.

(2) Any document requiring authentication by the Trust may be sufficiently authenticated without the seal of the Trust if it is signed by the President of the Board or the Executive Director or by any member of the staff of the Trust authorised to do so by the President or the Executive Director.

PART 3—BOARD OF THE NATIONAL TRUST**The Board**

- 8. (1)** The Trust is to have a board of directors.
- (2)** The Board is to consist of:
 - (a) 12 directors elected in accordance with Schedule 1; and
 - (b) an Executive Director, being a person appointed as Executive Director by the Board.
- (3)** The Executive Director:
 - (a) need not be a member of the Trust; and
 - (b) is appointed for such term as the Board determines; and

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- (c) is entitled to be paid such remuneration as the Board determines from time to time; and
- (d) may be removed from office by the Board or as otherwise provided by this Act.

Membership and procedure of the Board

- 9. Schedule 1 has effect.

Functions of the Board

10. (1) The Board has the control of the affairs of the Trust and has such other functions as may be conferred or imposed on the Board by or under this or any other Act.

(2) The Board is to exercise its functions in accordance with any directions given by the Trust in general meeting as permitted by the rules.

(3) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is to be taken to have been done by the Trust.

Executive Director to manage the Trust

11. The day to day affairs of the Trust are to be managed by the Executive Director in accordance with the directions of the Board.

Duties of directors, officers etc.

12. (1) The directors of the Board have the same general duties as the directors of a company have by law.

(2) Without limiting subsection (1), the following provisions of the Companies (New South Wales) Code apply to and in respect of the Trust as if the Trust were a company:

- section 229 (Duty and liability of officers)
- section 230 (Loans to directors)
- section 233 (Benefits for loss of, or retirement from, office)
- section 237 (Provisions indemnifying officers or auditors)
- Division 2 of Part 14 (Offences)

PART 4—PROPERTY AND POWERS OF INVESTMENT

Meaning of “property” and “property transaction”

13. In this Part:

“property” includes any interest in property;

“property transaction” has the meaning given by section 16.

Power to accept gifts etc.

14. (1) The Trust may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

(2) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Trust has agreed.

Property to be held subject to trust etc.

15. The Trust is to hold any property vested in or held by it in accordance with the terms of any trust or condition affecting the property.

Power to dispose etc. of property

16. (1) The Trust may sell, lease, mortgage, charge or otherwise dispose of, deal with or encumber any property vested in the Trust but, in the case of any property affected by any trust or condition, may do so only:

- (a) in accordance with the terms of the trust or condition; or
- (b) as otherwise permitted by this Part.

(2) The actions in relation to property which are described in subsection (1) are referred to in this Part as “**property transactions**”.

Property transactions and variations of trusts to improve ability of Trust to carry out its objects

17. (1) If the Board determines by special resolution that it is necessary or expedient to do so to improve the ability of the Trust to carry into effect or promote its objects generally, the Trust may apply to the appropriate authority for:

- (a) permission to effect a particular property transaction in relation to specified property vested in the Trust, despite the terms of any trust or condition affecting the property; or
- (b) a variation of the terms of any trust or condition affecting particular property vested in the Trust.

(2) The appropriate authority is:

- (a) the Attorney General, in respect of property that the Board is satisfied on reasonable grounds is worth less than \$500,000; or
- (b) the Supreme Court, in respect of any other property.

(3) The Attorney General may decline to deal with an application, in which case the Supreme Court is the appropriate authority for the application.

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(4) The appropriate authority may grant an application under this section only if satisfied that the proposed action is just and equitable, taking into account:

- (a) the Trust's ability to carry into effect or promote its objects generally, having regard to its current and prospective financial position; and
- (b) any evident intentions of the settlor or donor in creating the trust or imposing the condition.

(5) On the granting of an application under this section, the Trust is authorised to effect the property transaction concerned (despite the terms of any trust or condition affecting the property), or the variation of the terms of the trust or condition concerned takes effect.

Proceeds of property transactions to be held for Trust objects

18. The proceeds of a property transaction effected by the Trust are to be held and applied for the carrying into effect and promotion of the objects of the Trust.

Protection of persons involved in property transactions

19. (1) Any property sold or otherwise disposed of by way of a property transaction purporting to have been effected under this Part vests in the person acquiring the property by virtue of the sale or disposition freed and discharged from any trust or condition relating to the sale or disposition of the property or to the use of the property, to which the property was subject in the hands of the Trust.

(2) A person so acquiring property from the Trust need not be concerned to inquire whether circumstances have arisen to authorise the sale or other disposition or whether the power was otherwise properly and regularly exercised or to see to the application of any consideration paid to the Trust.

Occupation of Trust properties by members

20. The Trust may permit occupation (whether under lease or licence or otherwise) by any member of the Trust of any property or part of property vested in or held by the Trust for less than market consideration but only if the Board has determined by special resolution that the occupation should be permitted and is justified on the basis of services provided by the person to the Trust.

Land register

21. (1) The Board is to prepare and maintain a register showing details of:

- (a) all land vested in or held by the Trust; and
- (b) the current use of that land.

(2) The register is to be available for inspection by any person free of charge at the principal office of the Trust during normal business hours.

Investments

22. (1) The Trust may invest any of the trust funds or other funds of the Trust:

- (a) in accordance with and subject to the Trustee Act 1925; or
- (b) as otherwise permitted by the terms of any trust or condition affecting the funds.

(2) The Trust may retain and hold any investment transferred to the Trust otherwise than by purchase even if the investment is not authorised by subsection (1).

Investment common funds

23. (1) The Trust may establish one or more investment common funds.

(2) The Trust may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the Trust.

(3) Subject to subsection (4), the Trust must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.

(4) The Trust may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

(5) If an investment is brought into an investment common fund:

- (a) the Trust is to be taken to hold the investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund; and
- (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Trust at the time it is brought into the common fund; and
- (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount

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equivalent to the value attributed by the Trust to the equity in the common fund of that participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

Terms of trust etc. to prevail

24. The investment powers of the Trust and the power of the Trust to bring funds into an investment common fund are subject to the terms of any trust or condition affecting the funds concerned.

Imposition of restrictions or covenants on land

25. The Trust is to be taken to be a prescribed authority for the purposes of section 88D (Regulation of use of land held by a prescribed authority) of the Conveyancing Act 1919.

Prohibition on dividends, bonuses etc.

26. No dividend, bonus or other profit is at any time to be paid out of the income or property of the Trust to any member of the Trust.

Power of the Trust to act as trustee

27. The Trust may act as trustee of any land, building, work, structure or article referred to in section 5 (a), if appointed so to act by any person (including the Crown) entitled to appoint such trustees.

Power of the Trust to lend money and articles

28. Subject to the terms of any trust or condition affecting the money or article, the Trust may, for the purpose of promoting the objects of any corporation, body or society, either within or outside New South Wales, having objects wholly or substantially similar to the objects of the Trust, lend to it any money or articles of the Trust.

Exemption from stamp duty

29. The Stamp Duties Act 1920 does not apply to or in respect of:

- (a) any instrument executed after the commencement of The National Trust of Australia (New South Wales) Act 1960 whereby any real or personal property is, or is agreed to be, conveyed, transferred or leased to, or mortgaged by, the Trust; or

- (b) any devise or bequest in favour of the Trust and taking effect after that commencement.

PART 5—MISCELLANEOUS

Meetings of the Trust

30. (1) The Board is to call an annual general meeting of members of the Trust in each calendar year for the purpose of:

- (a) declaring the result of the election of directors; and
- (b) receiving the annual report and financial statements of the Trust from the Board; and
- (c) appointing auditors; and
- (d) exercising other functions of the Trust which under this Act or the rules may be exercised only at a general meeting.

(2) Sections 241 (Convening of general meeting on requisition), 242 (Convening of meetings) and 247 (Circulation of members' resolutions etc.) of the Companies (New South Wales) Code apply to the Trust in the same way as those sections apply to a company.

Winding up

31. (1) The Trust may be wound up in the same manner as that in which a company may be wound up under the Companies (New South Wales) Code but only on the ground that it is unable to pay its debts, and for that purpose Part 12 (Winding up) of that Code applies to the Trust as if it were a company.

(2) If the Trust is wound up:

- (a) a person is not, as a present or past member, liable to contribute to the property of the Trust for the purposes of payment of its debts or liabilities or of the costs, charges or expenses of the winding up or for the purposes of the adjustment of the rights of such members among themselves; and
- (b) the property of the Trust alone is liable for those purposes.

(3) In the event of the winding up of the Trust, any property vested in the Trust which the regulations provide is "protected property" for the purposes of this section is to be dealt with in accordance with subsection (4).

(4) The liquidator appointed for the winding up of the Trust is to transfer any protected property to such body or person as the Minister may direct, on such terms (including as to any consideration to be paid) as the Minister thinks appropriate.

(5) Property ordered to be transferred under this section is not liable to be applied in discharge of the Trust's debts or liabilities or the costs, charges and expenses of the winding up but is to be transferred subject to any trust, mortgage, charge or encumbrance to which it was subject immediately before being prescribed as protected property.

(6) A regulation that prescribes property as protected property can be made only on the recommendation of the Minister and the Minister is not to recommend the regulation unless satisfied that the property concerned is of special significance.

By-laws

32. (1) In this section, "Trust property" means:

- (a) land, buildings, works, structures or articles referred to in section 5 (a) and acquired by or under the control of the Trust; or
- (b) land acquired by or under the control of the Trust and used in conjunction with any building, work or structure referred to in paragraph (a).

(2) The Board may make by-laws, not inconsistent with this Act, for or with respect to:

- (a) the care, control and management of Trust property; and
- (b) the regulation of the use and enjoyment of Trust property; and
- (c) the securing of decency and order on Trust property; and
- (d) the removal of trespassers and other persons causing annoyance or inconvenience on or in Trust property; and
- (e) the regulation or prevention of the taking of intoxicants on to or into, and the consuming of them on or in, Trust property; and
- (f) the regulation and control of the taking of animals on to or into Trust property or the permitting or allowing of animals to be on or in Trust property; and
- (g) the regulation, control or prohibition of parking, camping or residing on or in Trust property, the making of charges for that parking, camping or residing, and the collecting and receiving of those charges by the Board or by other persons; and
- (h) the preservation or protection of, or prevention of damage to, trees, shrubs, ferns, creepers, vines, palms, plants, flowers, herbage or other vegetative cover on Trust property; and
- (i) the protection or removal of any dead timber, logs and stumps, whether standing or fallen, on any Trust property; and
- (j) the preservation, protection or removal of any rocks, soil, sand, stone or other similar substances on or under or comprising part of

Trust property; and

- (k) the preservation or protection of any animals, birds and fish and any other fauna of any nature whatever and whether naturally occurring or introduced on Trust property; and
- (l) the making of charges or entrance fees on persons, clubs or associations using or entering on Trust property, or any specified part or parts of Trust property, and the collecting and receiving of those charges and fees by the Board, or by other persons; and
- (m) generally any matters necessary or convenient for carrying out or giving effect to this Act, not being matters for and with respect to which rules may be made.

(3) The by-laws may create an offence punishable by a penalty not exceeding 10 penalty units.

(4) Proceedings for an offence under the by-laws are to be disposed of summarily before a Local Court constituted by a Magistrate.

(5) A by-law made by the Board is to be sealed with the common seal of the Trust and does not have effect unless approved by the Governor.

Rules

33. The Trust may in general meeting make rules, not inconsistent with this Act or the by-laws, for or with respect to:

- (a) regulating the affairs, business and management of the Trust; and
- (b) the method and time of convening, holding and adjourning meetings of the Trust and the Board, the voting at such meetings (including postal and proxy voting), the conduct and record of the business of the Trust and the Board, and the quorum at meetings of the Trust; and
- (c) the election of directors of the Board; and
- (d) regulating the admission, resignation and expulsion of members of the Trust; and
- (e) all matters which are required or permitted by this Act to be prescribed by the rules.

Accounts and audit

34. (1) Part 6 (Accounts and audit) of the Companies (New South Wales) Code applies to and in respect of the Trust in the same way as that Part applies to a company.

(2) If the Minister so directs, the Auditor-General is to inspect, examine and audit, and report to the Minister on, the books and accounts of the

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Trust and for that purpose Division 2 (Audit—generally) of Part 3 of the Public Finance and Audit Act 1983 is to apply as if the Trust were an authority within the meaning of that Act.

Copy of reports to be furnished to Minister

35. Within 30 days after each annual general meeting of the Trust, the Board is to furnish to the Minister for presentation to Parliament a copy of the annual report and financial statements of the Trust laid before the meeting.

Application of provisions of the Companies Code

36. (1) Provisions of the Companies (New South Wales) Code that apply to or in respect of the Trust under a provision of this Act apply subject to any modifications prescribed by the regulations under this Act.

(2) References in this Act to provisions of the Companies (New South Wales) Code include references to any regulations in force under those provisions.

Regulations

37. 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.

Repeal and dissolution

38. (1) The National Trust of Australia (New South Wales) Act 1960 is repealed.

(2) The Council of the National Trust established under the National Trust of Australia (New South Wales) Act 1960 is dissolved.

Savings and transitional provisions

39. Schedule 2 has effect.

Amendment of Subordinate Legislation Act 1989 No. 146

40. Schedule 4 (Excluded Instruments) of the Subordinate Legislation Act 1989 is amended by inserting after item 10 the following item:

10A. By-laws under the National Trust of Australia (New South Wales) Act 1990.

SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD

(Sec. 9)

Definitions

1. In this Schedule:

“**elected director**” means a director of the Board other than the Executive Director.

Election of directors

2. (1) The elected directors are to be elected by the Trust in accordance with the rules from among the members of the Trust.

(2) A person is not eligible for election as a director if the person:

- (a) is under the age of 18 years; or
- (b) holds any office or place of profit under the Trust.

(3) The rules for the election of directors must be such as to ensure that of the elected directors who from time to time constitute the Board:

- (a) at least 2 are persons ordinarily resident in the County of Cumberland; and
- (b) at least 2 are persons not ordinarily resident in the County of Cumberland but ordinarily resident elsewhere in New South Wales.

(4) The rules for the election of directors must provide for the individual election of directors.

Acting directors

3. (1) Each elected director may, from time to time in accordance with the rules, appoint a person to be an acting director in his or her place and may revoke any such appointment.

(2) The Board may, from time to time, appoint a person to be acting Executive Director and may revoke any such appointment.

(3) In the absence of a director, the acting director for that director:

- (a) is, if available, to act in the place of the director; and
- (b) while so acting, has all the functions of the director and is to be considered to be a director, subject to the rules in the case of an acting elected director and to any direction of the Board in the case of the acting Executive Director.

SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

Rotation of directors

4. (1) For the purposes of this clause, the first Board elected after the date of assent is to be divided into 2 classes of equal number, with:

- (a) the first class consisting of the directors who are declared to be first elected at the election, as provided by the rules; and
- (b) the second class consisting of the other directors elected at the election.

(2) The offices of the directors of the second class become vacant at the time of the annual general meeting of the Trust held in the year following the year of the election at which they were elected.

(3) The offices of directors of the first class become vacant at the time of the annual general meeting of the Trust held in the second year following the year of the election at which they were elected.

(4) Thereafter, the office of an elected director becomes vacant at the time of the annual general meeting of the Trust held in the second year following the year of the annual general meeting at which the director was declared elected.

(5) In this clause:

“year” means calendar year.

President, Deputy President and Treasurer

5. (1) At the first meeting of the Board held after each annual general meeting of the Trust, the directors are to elect from among themselves in accordance with the rules a President, Deputy President and Treasurer.

(2) The President, Deputy President and Treasurer hold office until the election of their successors at the corresponding meeting of the Board in the following calendar year.

(3) The Board may remove a director from the office of President, Deputy President or Treasurer at any time.

(4) A person who holds the office of President, Deputy President or Treasurer vacates that office if the person:

- (a) is removed from that office by the Board; or
- (b) resigns that office by instrument in writing addressed to the Board;
or
- (c) ceases to be a director.

SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD—*continued***Casual vacancy in office of director**

6. The office of a director becomes vacant if the director:
- (a) dies; or
 - (b) completes a term of office and is not re-elected or re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Board; or
 - (d) except in the case of the Executive Director, ceases to be a member of the Trust; or
 - (e) in the case of the Executive Director, is removed from office by the Board under section 8 (The Board); or
 - (f) is removed from office in accordance with section 225 of the Companies (New South Wales) Code, which by virtue of this section applies as if the Trust were a company; or
 - (g) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings; or
 - (h) vacates office under clause 8 (Disclosure of pecuniary interests); or
 - (i) 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
 - (j) becomes a mentally incapacitated person; or
 - (k) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

Vacancy in office of elected director

7. (1) If the office of an elected director becomes vacant under clause 6, the Board may appoint a member of the Trust to fill the vacancy during the remainder of the term of office of the director unless, in the case of a vacancy under clause 6 (f), the vacancy is filled under subclause (3).

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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

(2) In the absence of a quorum, the Executive Director is to appoint a sufficient number of persons under subclause (1) to constitute a quorum.

(3) If the office of an elected director becomes vacant under clause 6 (f), the vacancy may be filled during the remainder of the term of office of the director, in accordance with the rules, at the meeting at which the director is removed.

Disclosure of pecuniary interests

8. (1) If:

(a) a director 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 director's duties in relation to the consideration of the matter, the director is, as soon as possible after the relevant facts have come to the director's knowledge, to disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

(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 subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours at the principal office of the Trust to inspection by any member of the Trust on payment of the fee determined by the Board.

SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD—*continued*

(4) After a director has disclosed the nature of an interest in any matter, the director is not, unless the Board by special resolution otherwise determines:

- (a) to be present during any deliberation of the Board with respect to the matter; or
- (b) to take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates is not:

- (a) to be present during any deliberation of the other directors for the purpose of making the determination; or
- (b) to take part in the making by the other directors of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) A director who contravenes this clause vacates office as a director.

General procedure

9. 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 rules, to be as determined by the Board.

Quorum

10. The quorum for a meeting of the Board is 7 directors.

Presiding member

11. (1) The President of the Board or, in the absence of the President, the Deputy President, or in the absence of both the President and the Deputy President, another director elected to chair the meeting by the directors present is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

Voting

12. 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.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 39)

Definitions

1. In this Schedule:

“**administrator**” means the person appointed for the time being under section 13A of the Charitable Collections Act 1934 to be administrator of the Trust;

“**former Act**” means The National Trust of Australia (New South Wales) Act 1960.

First election of directors

2. As soon as practicable after the Minister approves rules under clause 6:

- (a) the elected directors (within the meaning of Schedule 1) are to be elected; and
- (b) the result of the election is to be declared.

First Executive Director

3. The first Executive Director of the Board is to be appointed by the administrator for a term not exceeding 2 years and is not subject to removal by the Board during the term of that appointment.

Revocation of appointment of administrator

4. The administrator is to declare the result of the first election of directors after the commencement of this Schedule by notice sent by post to the members of the Trust and the administrator's appointment is thereupon revoked.

Appointments etc. before commencement

5. (1) For the purposes only of enabling the Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 8 (The Board), appointments may be made and elections may

National Trust of Australia (New South Wales) 1990

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

be held under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent.

(2) No appointment as a director of the Board as so constituted takes effect before the commencement of section 8.

Rules

6. (1) The Minister is to approve rules containing such provisions as the Minister thinks fit as the new rules of the Trust.

(2) The rules so approved by the Minister replace the current rules of the Trust and, on the commencement of section 33 (Rules), are to be regarded as having been made under that section by the Trust in general meeting and may accordingly be amended or revoked by the Trust in general meeting.

By-laws under former Act

7. The by-laws in force under the former Act immediately before its repeal continue in force as if they had been made by the Board under this Act and may be amended or revoked accordingly.

References to The National Trust of Australia (New South Wales)

8. From the commencement of section 8 (The Board) a reference in any instrument to The National Trust of Australia (New South Wales) is to be read as a reference to the Trust.

Current investments authorised to be retained

9. The Trust may retain and hold any investment held by the Trust under section 19 of the former Act immediately before the repeal of that section even if that investment would not be authorised under this Act.

Savings and transitional regulations

10. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

National Trust of Australia (New South Wales) 1990

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, 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.

[*Minister's second reading speech made in—
Legislative Assembly on 20 November 1990
Legislative Council on 28 November 1990*]

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FIRST PRINT

**NATIONAL TRUST OF AUSTRALIA (NEW SOUTH WALES)
BILL 1990**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to repeal The National Trust of Australia (New South Wales) Act 1960 and to replace it with a new Act which restructures the National Trust, provides greater flexibility in the Trust's power to deal with its assets and increases its financial accountability.

The proposed new Act will:

- (a) continue The National Trust of Australia (New South Wales) as the same legal entity as that created under the 1960 Act;
 - (b) replace the present Council of the Trust (consisting of 27 ex officio, appointed or elected councillors) with a Board consisting of 12 elected directors and 1 Executive Director appointed by the Board;
 - (c) provide for the Board to have control of the affairs of the Trust and for the Executive Director to manage the day to day affairs of the Trust subject to the directions of the Board;
 - (d) increase the accountability of directors and other officers of the Trust;
 - (e) give the Trust broad powers to deal with its assets subject to any trust or condition affecting the assets;
 - (f) restrict the investment powers of the Trust to authorised trustee investments and permit the pooling of trust funds for investment purposes;
 - (g) streamline the Trust's powers to dispose of property affected by a trust or condition by enabling such property to be disposed of, or the trust or condition to be varied, with the approval of the Attorney General or the Supreme Court;
 - (h) apply the accounts and audit provisions of the Companies (New South Wales) Code to the Trust;
 - (i) permit the winding up of the Trust under the Companies (New South Wales) Code if it is unable to pay its debts and provide a mechanism for the protection of significant Trust property in the event of a winding up;
 - (j) make transitional arrangements for the election of the new Board.
-

National Trust of Australia (New South Wales) 1990

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines terms used in the proposed Act. An important definition is that of "special resolution" which is a resolution of the Board passed by at least 75% of the directors present and entitled to vote at the meeting of the Board.

PART 2—THE NATIONAL TRUST

Clause 4 establishes The National Trust as a continuation of The National Trust established under The National Trust of Australia (New South Wales) Act 1960. The Trust does not represent the Crown.

Clause 5 states the objects of the Trust. The objects are the same as those under the 1960 Act.

Clause 6 confers on the Trust the broad powers that bodies corporate have, for the purpose of enabling the Trust to carry into effect and promote its objects.

Clause 7 provides for the affixing of the common seal of the Trust.

PART 3—BOARD OF THE NATIONAL TRUST

Clause 8 provides for the membership of the Board of directors of the Trust. The Board is to consist of 12 elected directors and 1 Executive Director who is appointed by the Board.

Clause 9 gives effect to Schedule 1 which contains detailed provisions concerning the membership and procedure of the Board.

Clause 10 provides that the Board has control of the affairs of the Trust but is subject, to the extent that the Trust's rules provide, to the directions of the members in general meeting.

Clause 11 provides that the Executive Director is responsible for the day to day management of the affairs of the Trust in accordance with the directions of the Board.

Clause 12 imposes on the directors the same duties as the directors of a company have at common law and applies certain provisions of the Companies (New South Wales) Code (relating to the duties of directors and officers of a company) to the directors and officers of the Trust.

PART 4—PROPERTY AND POWERS OF INVESTMENT

Clause 13 contains definitions.

Clause 14 empowers the Trust to acquire property by gift, bequest and devise (whether or not subject to conditions).

Clause 15 requires the Trust to hold its property subject to the terms of any trust or condition affecting the property.

National Trust of Australia (New South Wales) 1990

Clause 16 empowers the Board to sell, lease, mortgage, charge or otherwise dispose of, deal with or encumber its property, subject to any trust or condition affecting the property.

Clause 17 enables the Trust to apply to the Supreme Court or the Attorney General for permission to dispose etc. of Trust property despite any trust or condition affecting it, or to vary any trust or condition affecting Trust property, to improve the ability of the Trust to carry out its objects. A special resolution of the Board is required. The Attorney General and the Court must take into account the Trust's financial position and any evident intentions of the settlor or donor of the property in determining whether it would be just or equitable to grant the permission.

Clause 18 makes it clear that the proceeds of Trust property transactions are to be held and applied for the Trust's objects.

Clause 19 protects persons acquiring property from the Trust from any trust or condition that affected the property in the Trust's hands.

Clause 20 allows the Trust to permit the occupation of Trust property by members at less than market rental if the Board resolves by special resolution that the action is justified on the basis of services provided to the Trust by the member.

Clause 21 requires the Board to maintain a register of Trust land which is to show what each property is used for and be open for inspection by members.

Clause 22 restricts the Trust's investment powers to authorised trustee investments or any other investment authorised by the terms of the particular trust concerned.

Clause 23 allows the Trust to pool trust funds when investing them.

Clause 24 provides that the Trust's investment and pooling powers are subject to the terms of any applicable trust or condition affecting the funds.

Clause 25 deems the Trust to be a prescribed authority for the purposes of section 88D of the Conveyancing Act 1919 which enables the Trust to impose restrictions on the use of, or impose public positive covenants on, any land vested in it.

Clause 26 prohibits the Trust paying dividends.

Clause 27 permits the Trust to act as trustee.

Clause 28 authorises the Trust to lend money and articles to bodies having similar objects to the Trust.

Clause 29 exempts certain property transactions involving the Trust from payment of stamp duty.

PART 5—MISCELLANEOUS

Clause 30 requires the Board to call an annual general meeting of the Trust and enables members of the Trust to call meetings and propose resolutions.

Clause 31 allows the Trust to be wound up under the Companies (New South Wales) Code if it is unable to pay its debts. Provision is also made for the regulations to identify "protected property" which will not be subject to a winding up but will be transferred as the Minister directs.

Clause 32 reproduces the by-law making power of the 1960 Act which authorises the Board to make by-laws for the protection and management of Trust property.

National Trust of Australia (New South Wales) 1990

Clause 33 empowers the Trust in general meeting to make rules for regulating the affairs etc. of the Trust.

Clause 34 applies the accounts and audit provisions of the Companies (New South Wales) Code to the Trust and the Minister is given power to direct the Auditor-General to inspect the books and accounts of the Trust.

Clause 35 requires a copy of the annual report and financial statements of the Trust to be furnished to the Minister for presentation to Parliament.

Clause 36 allows the regulations to modify the application to the Trust of provisions of the Companies (New South Wales) Code that are applied to the Trust by the proposed Act.

Clause 37 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 38 repeals The National Trust of Australia (New South Wales) Act 1960 and the rules of the Trust under that Act, and dissolves the Council of the Trust established under that Act.

Clause 39 gives effect to Schedule 2 which contains savings and transitional provisions.

Clause 40 excludes By-laws made under the Act from the operation of the Subordinate Legislation Act 1989.

SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD

Schedule 1 contains provisions relating to the election and rotation of directors (voting for directors in "blocks" is not permitted), appointment of acting directors, election of office bearers, vacation of office by directors, disclosure of pecuniary interests by directors and the procedure at meetings of the Board.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 2 contains savings and transitional provisions, including provisions:

- (a) for the first Executive Director of the Board to be appointed for a term of up to 2 years by the current administrator of the Trust under the Charitable Collections Act 1934;
 - (b) for the appointment of the administrator to be revoked when the first Board is elected;
 - (c) enabling appointments to be made and elections to be held before the commencement of proposed section 8 (The Board) for the purpose of constituting the new Board on that commencement;
 - (d) for the new rules of the Trust to be as approved by the Minister;
 - (e) continuing the current by-laws of the Trust until revoked or amended by the new Board;
 - (f) enabling the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.
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FIRST PRINT

**NATIONAL TRUST OF AUSTRALIA (NEW SOUTH WALES)
BILL 1990**

NEW SOUTH WALES



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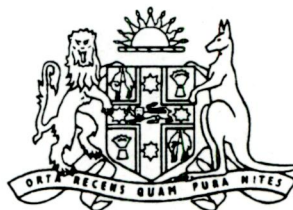
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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD
SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

**NATIONAL TRUST OF AUSTRALIA (NEW SOUTH WALES)
BILL 1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to make further provision with respect to the constitution, objects and functions of The National Trust of Australia (New South Wales); to repeal The National Trust of Australia (New South Wales) Act 1960; and for related purposes.

National Trust of Australia (New South Wales) 1990

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the National Trust of Australia (New South Wales) Act 1990.

Commencement

2. (1) This Act (section 39 and Schedule 2 excepted) commences on a day or days to be appointed by proclamation.

(2) Section 39 and Schedule 2 commence on the date of assent.

Definitions

3. (1) In this Act:

“**Board**” means the board of directors of the Trust;

“**director**” means any director of the Board (including the Executive Director);

“**Executive Director**” means the executive director of the Board;

“**rules**” means rules made by the Trust and in force under this Act;

“**special resolution**” means a resolution of the Board:

(a) passed at a meeting of the Board of which not less than 21 days’ written notice specifying the intention to propose the resolution as a special resolution has been duly given to all directors of the Board; and

(b) passed by a majority of not less than three-quarters of the directors of the Board present and entitled to vote at the meeting;

“**Trust**” means The National Trust of Australia (New South Wales) established by this Act.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty; and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

PART 2—THE NATIONAL TRUST

Establishment of the Trust

4. (1) There is established by this Act a body corporate to be called The National Trust of Australia (New South Wales), consisting of the persons who under the rules are members of the Trust.

(2) The Trust is a continuation of, and the same legal entity as, The National Trust of Australia (New South Wales) constituted under The National Trust of Australia (New South Wales) Act 1960.

(3) The Trust is to be considered to be a statutory body and a statutory corporation for the purposes of the Interpretation Act 1987 but does not represent the Crown.

(4) Nothing in this Act is to be taken to constitute the Trust as a company for the purposes of any law, or previous law, of the State relating to companies.

Objects of the Trust

5. The objects of the Trust are:

- (a) to acquire, control, maintain, protect and preserve for the benefit of the public generally land, buildings, works, structures and articles, of beauty or of national, historical, antiquarian, scientific, artistic, architectural or cultural interest (including Aboriginal relics, Aboriginal rock carvings and Aboriginal rock paintings and archaeological sites); and
- (b) to protect and preserve the natural features of, and to conserve the fauna and flora on, any land referred to in paragraph (a) and acquired by or under the control of the Trust; and
- (c) to encourage and promote, by any means whatever, public appreciation, knowledge and enjoyment of, respect for, and interest in, any land, buildings, works, structures or articles referred to in paragraph (a); and
- (d) to provide and improve amenities on and access to any land, buildings, works and structures referred to in paragraph (a) and acquired by or under the control of the Trust; and
- (e) to co-operate with any corporation, body or society, either within or outside New South Wales, having objects wholly or substantially similar to the objects of the Trust, in promoting the objects of such corporation, body or society or the Trust.

Powers etc. of the Trust

6. The Trust:

- (a) has perpetual succession; and
- (b) is to have a seal; and
- (c) may take proceedings and be proceeded against in its corporate name; and
- (d) may, for the purpose of enabling it to carry into effect or promote its objects, borrow money either with or without security, and purchase, exchange, take on lease, hold, dispose of and otherwise deal with property; and
- (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the carrying into effect or promotion of its objects.

Seal of the Trust

7. (1) The seal of the Trust is to be kept by the Executive Director and is to be affixed to a document only:

- (a) in the presence of the Executive Director and one other director or in the presence of any 3 directors; and
- (b) with an attestation by the signatures of those directors of the fact of the affixing of the seal.

(2) Any document requiring authentication by the Trust may be sufficiently authenticated without the seal of the Trust if it is signed by the President of the Board or the Executive Director or by any member of the staff of the Trust authorised to do so by the President or the Executive Director.

PART 3—BOARD OF THE NATIONAL TRUST

The Board

8. (1) The Trust is to have a board of directors.
- (2) The Board is to consist of:
- (a) 12 directors elected in accordance with Schedule 1; and
 - (b) an Executive Director, being a person appointed as Executive Director by the Board.
- (3) The Executive Director:
- (a) need not be a member of the Trust; and
 - (b) is appointed for such term as the Board determines; and

National Trust of Australia (New South Wales) 1990

- (c) is entitled to be paid such remuneration as the Board determines from time to time; and
- (d) may be removed from office by the Board or as otherwise provided by this Act.

Membership and procedure of the Board

9. Schedule 1 has effect.

Functions of the Board

10. (1) The Board has the control of the affairs of the Trust and has such other functions as may be conferred or imposed on the Board by or under this or any other Act.

(2) The Board is to exercise its functions in accordance with any directions given by the Trust in general meeting as permitted by the rules.

(3) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is to be taken to have been done by the Trust.

Executive Director to manage the Trust

11. The day to day affairs of the Trust are to be managed by the Executive Director in accordance with the directions of the Board.

Duties of directors, officers etc.

12. (1) The directors of the Board have the same general duties as the directors of a company have by law.

(2) Without limiting subsection (1), the following provisions of the Companies (New South Wales) Code apply to and in respect of the Trust as if the Trust were a company:

- section 229 (Duty and liability of officers)
- section 230 (Loans to directors)
- section 233 (Benefits for loss of, or retirement from, office)
- section 237 (Provisions indemnifying officers or auditors)
- Division 2 of Part 14 (Offences)

PART 4—PROPERTY AND POWERS OF INVESTMENT

Meaning of “property” and “property transaction”

13. In this Part:

“property” includes any interest in property;

“property transaction” has the meaning given by section 16.

National Trust of Australia (New South Wales) 1990

Power to accept gifts etc.

14. (1) The Trust may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.

(2) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Trust has agreed.

Property to be held subject to trust etc.

15. The Trust is to hold any property vested in or held by it in accordance with the terms of any trust or condition affecting the property.

Power to dispose etc. of property

16. (1) The Trust may sell, lease, mortgage, charge or otherwise dispose of, deal with or encumber any property vested in the Trust but, in the case of any property affected by any trust or condition, may do so only:

- (a) in accordance with the terms of the trust or condition; or
- (b) as otherwise permitted by this Part.

(2) The actions in relation to property which are described in subsection (1) are referred to in this Part as “property transactions”.

Property transactions and variations of trusts to improve ability of Trust to carry out its objects

17. (1) If the Board determines by special resolution that it is necessary or expedient to do so to improve the ability of the Trust to carry into effect or promote its objects generally, the Trust may apply to the appropriate authority for:

- (a) permission to effect a particular property transaction in relation to specified property vested in the Trust, despite the terms of any trust or condition affecting the property; or
- (b) a variation of the terms of any trust or condition affecting particular property vested in the Trust.

(2) The appropriate authority is:

- (a) the Attorney General, in respect of property that the Board is satisfied on reasonable grounds is worth less than \$500,000; or
- (b) the Supreme Court, in respect of any other property.

(3) The Attorney General may decline to deal with an application, in which case the Supreme Court is the appropriate authority for the application.

National Trust of Australia (New South Wales) 1990

(4) The appropriate authority may grant an application under this section only if satisfied that the proposed action is just and equitable, taking into account:

- (a) the Trust's ability to carry into effect or promote its objects generally, having regard to its current and prospective financial position; and
- (b) any evident intentions of the settlor or donor in creating the trust or imposing the condition.

(5) On the granting of an application under this section, the Trust is authorised to effect the property transaction concerned (despite the terms of any trust or condition affecting the property), or the variation of the terms of the trust or condition concerned takes effect.

Proceeds of property transactions to be held for Trust objects

18. The proceeds of a property transaction effected by the Trust are to be held and applied for the carrying into effect and promotion of the objects of the Trust.

Protection of persons involved in property transactions

19. (1) Any property sold or otherwise disposed of by way of a property transaction purporting to have been effected under this Part vests in the person acquiring the property by virtue of the sale or disposition freed and discharged from any trust or condition relating to the sale or disposition of the property or to the use of the property, to which the property was subject in the hands of the Trust.

(2) A person so acquiring property from the Trust need not be concerned to inquire whether circumstances have arisen to authorise the sale or other disposition or whether the power was otherwise properly and regularly exercised or to see to the application of any consideration paid to the Trust.

Occupation of Trust properties by members

20. The Trust may permit occupation (whether under lease or licence or otherwise) by any member of the Trust of any property or part of property vested in or held by the Trust for less than market consideration but only if the Board has determined by special resolution that the occupation should be permitted and is justified on the basis of services provided by the person to the Trust.

Land register

21. (1) The Board is to prepare and maintain a register showing details of:

National Trust of Australia (New South Wales) 1990

- (a) all land vested in or held by the Trust; and
- (b) the current use of that land.

(2) The register is to be available for inspection by any person free of charge at the principal office of the Trust during normal business hours.

Investments

22. (1) The Trust may invest any of the trust funds or other funds of the Trust:

- (a) in accordance with and subject to the Trustee Act 1925; or
- (b) as otherwise permitted by the terms of any trust or condition affecting the funds.

(2) The Trust may retain and hold any investment transferred to the Trust otherwise than by purchase even if the investment is not authorised by subsection (1).

Investment common funds

23. (1) The Trust may establish one or more investment common funds.

(2) The Trust may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the Trust.

(3) Subject to subsection (4), the Trust must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.

(4) The Trust may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.

(5) If an investment is brought into an investment common fund:

- (a) the Trust is to be taken to hold the investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund; and
- (b) that participating fund is to be taken to have contributed to the common fund an amount of money equivalent to the value attributed to the investment by the Trust at the time it is brought into the common fund; and
- (c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount

National Trust of Australia (New South Wales) 1990

equivalent to the value attributed by the Trust to the equity in the common fund of that participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

Terms of trust etc. to prevail

24. The investment powers of the Trust and the power of the Trust to bring funds into an investment common fund are subject to the terms of any trust or condition affecting the funds concerned.

Imposition of restrictions or covenants on land

25. The Trust is to be taken to be a prescribed authority for the purposes of section 88D (Regulation of use of land held by a prescribed authority) of the Conveyancing Act 1919.

Prohibition on dividends, bonuses etc.

26. No dividend, bonus or other profit is at any time to be paid out of the income or property of the Trust to any member of the Trust.

Power of the Trust to act as trustee

27. The Trust may act as trustee of any land, building, work, structure or article referred to in section 5 (a), if appointed so to act by any person (including the Crown) entitled to appoint such trustees.

Power of the Trust to lend money and articles

28. Subject to the terms of any trust or condition affecting the money or article, the Trust may, for the purpose of promoting the objects of any corporation, body or society, either within or outside New South Wales, having objects wholly or substantially similar to the objects of the Trust, lend to it any money or articles of the Trust.

Exemption from stamp duty

29. The Stamp Duties Act 1920 does not apply to or in respect of:

- (a) any instrument executed after the commencement of The National Trust of Australia (New South Wales) Act 1960 whereby any real or personal property is, or is agreed to be, conveyed, transferred or leased to, or mortgaged by, the Trust; or

- (b) any devise or bequest in favour of the Trust and taking effect after that commencement.

PART 5—MISCELLANEOUS

Meetings of the Trust

30. (1) The Board is to call an annual general meeting of members of the Trust in each calendar year for the purpose of:

- (a) declaring the result of the election of directors; and
- (b) receiving the annual report and financial statements of the Trust from the Board; and
- (c) appointing auditors; and
- (d) exercising other functions of the Trust which under this Act or the rules may be exercised only at a general meeting.

(2) Sections 241 (Convening of general meeting on requisition), 242 (Convening of meetings) and 247 (Circulation of members' resolutions etc.) of the Companies (New South Wales) Code apply to the Trust in the same way as those sections apply to a company.

Winding up

31. (1) The Trust may be wound up in the same manner as that in which a company may be wound up under the Companies (New South Wales) Code but only on the ground that it is unable to pay its debts, and for that purpose Part 12 (Winding up) of that Code applies to the Trust as if it were a company.

(2) If the Trust is wound up:

- (a) a person is not, as a present or past member, liable to contribute to the property of the Trust for the purposes of payment of its debts or liabilities or of the costs, charges or expenses of the winding up or for the purposes of the adjustment of the rights of such members among themselves; and
- (b) the property of the Trust alone is liable for those purposes.

(3) In the event of the winding up of the Trust, any property vested in the Trust which the regulations provide is "protected property" for the purposes of this section is to be dealt with in accordance with subsection (4).

(4) The liquidator appointed for the winding up of the Trust is to transfer any protected property to such body or person as the Minister may direct, on such terms (including as to any consideration to be paid) as the Minister thinks appropriate.

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(5) Property ordered to be transferred under this section is not liable to be applied in discharge of the Trust's debts or liabilities or the costs, charges and expenses of the winding up but is to be transferred subject to any trust, mortgage, charge or encumbrance to which it was subject immediately before being prescribed as protected property.

(6) A regulation that prescribes property as protected property can be made only on the recommendation of the Minister and the Minister is not to recommend the regulation unless satisfied that the property concerned is of special significance.

By-laws

32. (1) In this section, "**Trust property**" means:

- (a) land, buildings, works, structures or articles referred to in section 5 (a) and acquired by or under the control of the Trust; or
- (b) land acquired by or under the control of the Trust and used in conjunction with any building, work or structure referred to in paragraph (a).

(2) The Board may make by-laws, not inconsistent with this Act, for or with respect to:

- (a) the care, control and management of Trust property; and
- (b) the regulation of the use and enjoyment of Trust property; and
- (c) the securing of decency and order on Trust property; and
- (d) the removal of trespassers and other persons causing annoyance or inconvenience on or in Trust property; and
- (e) the regulation or prevention of the taking of intoxicants on to or into, and the consuming of them on or in, Trust property; and
- (f) the regulation and control of the taking of animals on to or into Trust property or the permitting or allowing of animals to be on or in Trust property; and
- (g) the regulation, control or prohibition of parking, camping or residing on or in Trust property, the making of charges for that parking, camping or residing, and the collecting and receiving of those charges by the Board or by other persons; and
- (h) the preservation or protection of, or prevention of damage to, trees, shrubs, ferns, creepers, vines, palms, plants, flowers, herbage or other vegetative cover on Trust property; and
- (i) the protection or removal of any dead timber, logs and stumps, whether standing or fallen, on any Trust property; and
- (j) the preservation, protection or removal of any rocks, soil, sand, stone or other similar substances on or under or comprising part of

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Trust property; and

- (k) the preservation or protection of any animals, birds and fish and any other fauna of any nature whatever and whether naturally occurring or introduced on Trust property; and
- (l) the making of charges or entrance fees on persons, clubs or associations using or entering on Trust property, or any specified part or parts of Trust property, and the collecting and receiving of those charges and fees by the Board, or by other persons; and
- (m) generally any matters necessary or convenient for carrying out or giving effect to this Act, not being matters for and with respect to which rules may be made.

(3) The by-laws may create an offence punishable by a penalty not exceeding 10 penalty units.

(4) Proceedings for an offence under the by-laws are to be disposed of summarily before a Local Court constituted by a Magistrate.

(5) A by-law made by the Board is to be sealed with the common seal of the Trust and does not have effect unless approved by the Governor.

Rules

33. The Trust may in general meeting make rules, not inconsistent with this Act or the by-laws, for or with respect to:

- (a) regulating the affairs, business and management of the Trust; and
- (b) the method and time of convening, holding and adjourning meetings of the Trust and the Board, the voting at such meetings (including postal and proxy voting), the conduct and record of the business of the Trust and the Board, and the quorum at meetings of the Trust; and
- (c) the election of directors of the Board; and
- (d) regulating the admission, resignation and expulsion of members of the Trust; and
- (e) all matters which are required or permitted by this Act to be prescribed by the rules.

Accounts and audit

34. (1) Part 6 (Accounts and audit) of the Companies (New South Wales) Code applies to and in respect of the Trust in the same way as that Part applies to a company.

(2) If the Minister so directs, the Auditor-General is to inspect, examine and audit, and report to the Minister on, the books and accounts of the

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Trust and for that purpose Division 2 (Audit—generally) of Part 3 of the Public Finance and Audit Act 1983 is to apply as if the Trust were an authority within the meaning of that Act.

Copy of reports to be furnished to Minister

35. Within 30 days after each annual general meeting of the Trust, the Board is to furnish to the Minister for presentation to Parliament a copy of the annual report and financial statements of the Trust laid before the meeting.

Application of provisions of the Companies Code

36. (1) Provisions of the Companies (New South Wales) Code that apply to or in respect of the Trust under a provision of this Act apply subject to any modifications prescribed by the regulations under this Act.

(2) References in this Act to provisions of the Companies (New South Wales) Code include references to any regulations in force under those provisions.

Regulations

37. 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.

Repeal and dissolution

38. (1) The National Trust of Australia (New South Wales) Act 1960 is repealed.

(2) The Council of the National Trust established under the National Trust of Australia (New South Wales) Act 1960 is dissolved.

Savings and transitional provisions

39. Schedule 2 has effect.

Amendment of Subordinate Legislation Act 1989 No. 146

40. Schedule 4 (Excluded Instruments) of the Subordinate Legislation Act 1989 is amended by inserting after item 10 the following item:

10A. By-laws under the National Trust of Australia (New South Wales) Act 1990.

SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE BOARD

(Sec. 9)

Definitions

1. In this Schedule:

“**elected director**” means a director of the Board other than the Executive Director.

Election of directors

2. (1) The elected directors are to be elected by the Trust in accordance with the rules from among the members of the Trust.

(2) A person is not eligible for election as a director if the person:

(a) is under the age of 18 years; or

(b) holds any office or place of profit under the Trust.

(3) The rules for the election of directors must be such as to ensure that of the elected directors who from time to time constitute the Board:

(a) at least 2 are persons ordinarily resident in the County of Cumberland; and

(b) at least 2 are persons not ordinarily resident in the County of Cumberland but ordinarily resident elsewhere in New South Wales.

(4) The rules for the election of directors must provide for the individual election of directors.

Acting directors

3. (1) Each elected director may, from time to time in accordance with the rules, appoint a person to be an acting director in his or her place and may revoke any such appointment.

(2) The Board may, from time to time, appoint a person to be acting Executive Director and may revoke any such appointment.

(3) In the absence of a director, the acting director for that director:

(a) is, if available, to act in the place of the director; and

(b) while so acting, has all the functions of the director and is to be considered to be a director, subject to the rules in the case of an acting elected director and to any direction of the Board in the case of the acting Executive Director.

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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

Rotation of directors

4. (1) For the purposes of this clause, the first Board elected after the date of assent is to be divided into 2 classes of equal number, with:

- (a) the first class consisting of the directors who are declared to be first elected at the election, as provided by the rules; and
- (b) the second class consisting of the other directors elected at the election.

(2) The offices of the directors of the second class become vacant at the time of the annual general meeting of the Trust held in the year following the year of the election at which they were elected.

(3) The offices of directors of the first class become vacant at the time of the annual general meeting of the Trust held in the second year following the year of the election at which they were elected.

(4) Thereafter, the office of an elected director becomes vacant at the time of the annual general meeting of the Trust held in the second year following the year of the annual general meeting at which the director was declared elected.

(5) In this clause:

“year” means calendar year.

President, Deputy President and Treasurer

5. (1) At the first meeting of the Board held after each annual general meeting of the Trust, the directors are to elect from among themselves in accordance with the rules a President, Deputy President and Treasurer.

(2) The President, Deputy President and Treasurer hold office until the election of their successors at the corresponding meeting of the Board in the following calendar year.

(3) The Board may remove a director from the office of President, Deputy President or Treasurer at any time.

(4) A person who holds the office of President, Deputy President or Treasurer vacates that office if the person:

- (a) is removed from that office by the Board; or
- (b) resigns that office by instrument in writing addressed to the Board;
or
- (c) ceases to be a director.

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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

Casual vacancy in office of director

6. The office of a director becomes vacant if the director:
- (a) dies; or
 - (b) completes a term of office and is not re-elected or re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Board; or
 - (d) except in the case of the Executive Director, ceases to be a member of the Trust; or
 - (e) in the case of the Executive Director, is removed from office by the Board under section 8 (The Board); or
 - (f) is removed from office in accordance with section 225 of the Companies (New South Wales) Code, which by virtue of this section applies as if the Trust were a company; or
 - (g) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings; or
 - (h) vacates office under clause 8 (Disclosure of pecuniary interests); or
 - (i) 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
 - (j) becomes a mentally incapacitated person; or
 - (k) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

Vacancy in office of elected director

7. (1) If the office of an elected director becomes vacant under clause 6, the Board may appoint a member of the Trust to fill the vacancy during the remainder of the term of office of the director unless, in the case of a vacancy under clause 6 (f), the vacancy is filled under subclause (3).

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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

(2) In the absence of a quorum, the Executive Director is to appoint a sufficient number of persons under subclause (1) to constitute a quorum.

(3) If the office of an elected director becomes vacant under clause 6 (f), the vacancy may be filled during the remainder of the term of office of the director, in accordance with the rules, at the meeting at which the director is removed.

Disclosure of pecuniary interests

8. (1) If:

(a) a director 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 director's duties in relation to the consideration of the matter, the director is, as soon as possible after the relevant facts have come to the director's knowledge, to disclose the nature of the interest at a meeting of the Board.

(2) A disclosure by a director at a meeting of the Board that the director:

(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 subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours at the principal office of the Trust to inspection by any member of the Trust on payment of the fee determined by the Board.

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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

(4) After a director has disclosed the nature of an interest in any matter, the director is not, unless the Board by special resolution otherwise determines:

- (a) to be present during any deliberation of the Board with respect to the matter; or
- (b) to take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates is not:

- (a) to be present during any deliberation of the other directors for the purpose of making the determination; or
- (b) to take part in the making by the other directors of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

(7) A director who contravenes this clause vacates office as a director.

General procedure

9. 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 rules, to be as determined by the Board.

Quorum

10. The quorum for a meeting of the Board is 7 directors.

Presiding member

11. (1) The President of the Board or, in the absence of the President, the Deputy President, or in the absence of both the President and the Deputy President, another director elected to chair the meeting by the directors present is to preside at a meeting of the Board.

(2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

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SCHEDULE 1—MEMBERSHIP AND PROCEDURE OF THE
BOARD—*continued*

Voting

12. 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.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 39)

Definitions

1. In this Schedule:

“**administrator**” means the person appointed for the time being under section 13A of the Charitable Collections Act 1934 to be administrator of the Trust;

“**former Act**” means The National Trust of Australia (New South Wales) Act 1960.

First election of directors

2. As soon as practicable after the Minister approves rules under clause 6:

- (a) the elected directors (within the meaning of Schedule 1) are to be elected; and
- (b) the result of the election is to be declared.

First Executive Director

3. The first Executive Director of the Board is to be appointed by the administrator for a term not exceeding 2 years and is not subject to removal by the Board during the term of that appointment.

Revocation of appointment of administrator

4. The administrator is to declare the result of the first election of directors after the commencement of this Schedule by notice sent by post to the members of the Trust and the administrator's appointment is thereupon revoked.

Appointments etc. before commencement

5. (1) For the purposes only of enabling the Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 8 (The Board), appointments may be made and elections may

National Trust of Australia (New South Wales) 1990

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

be held under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent.

(2) No appointment as a director of the Board as so constituted takes effect before the commencement of section 8.

Rules

6. (1) The Minister is to approve rules containing such provisions as the Minister thinks fit as the new rules of the Trust.

(2) The rules so approved by the Minister replace the current rules of the Trust and, on the commencement of section 33 (Rules), are to be regarded as having been made under that section by the Trust in general meeting and may accordingly be amended or revoked by the Trust in general meeting.

By-laws under former Act

7. The by-laws in force under the former Act immediately before its repeal continue in force as if they had been made by the Board under this Act and may be amended or revoked accordingly.

References to The National Trust of Australia (New South Wales)

8. From the commencement of section 8 (The Board) a reference in any instrument to The National Trust of Australia (New South Wales) is to be read as a reference to the Trust.

Current investments authorised to be retained

9. The Trust may retain and hold any investment held by the Trust under section 19 of the former Act immediately before the repeal of that section even if that investment would not be authorised under this Act.

Savings and transitional regulations

10. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—
continued

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, 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.
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