



New South Wales

Museums of History NSW Act 2022 No 42

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New South Wales

Museums of History NSW Act 2022 No 42

Act No 42, 2022

An Act to establish and confer functions on Museums of History NSW and repeal the *Historic Houses Act 1980*; to amend the *State Records Act 1998* to transfer certain functions of the State Archives and Records Authority of New South Wales to Museums of History NSW and consequently rename the Authority; and for other purposes. [Assented to 4 October 2022]

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Museums of History NSW Act 2022*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 4[1], [3], [17] and [21]–[25]—on 1 January 2024,
- (b) otherwise—on 31 December 2022.

3 Definitions

In this Act—

acquire includes purchase or lease.

advisory committee means an advisory committee established under Schedule 1, section 7.

Board means the Board of Museums of History NSW.

building includes—

- (a) part of a building, and
- (b) a structure or part of a structure, and
- (c) associated grounds or works.

Chief Executive Officer means the Chief Executive Officer of Museums of History NSW.

control, of a State record, has the same meaning as in the *State Records Act 1998*.

exercise a function includes perform a duty.

function includes the following—

- (a) power,
- (b) authority,
- (c) duty.

gift includes the following—

- (a) devise,
- (b) bequest.

member means a member of the Board appointed under section 7.

record has the same meaning as in the *State Records Act 1998*.

significant building or site—see section 13.

site includes associated works.

State archive means a State record that Museums of History NSW has control of under the *State Records Act 1998*.

State record has the same meaning as in the *State Records Act 1998*.

written notice includes electronic communication.

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

4 Relationship with certain other Acts

This Act does not—

- (a) affect the operation of the *Heritage Act 1977*, or
- (b) apply to land reserved under the *National Parks and Wildlife Act 1974*.

Part 2 Constitution and management of Museums of History NSW

5 Constitution of Museums of History NSW

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

6 Status of Museums of History NSW

- (1) Museums of History NSW is a statutory body representing the Crown.
Note— See the *Interpretation Act 1987*, section 13A.
- (2) Museums of History NSW is subject to the control and direction of the Minister in the exercise of its functions.

7 Board of Museums of History NSW

- (1) There is a Board of Museums of History NSW.
- (2) The general policies and strategic direction of Museums of History NSW is to be decided by the Board.
- (3) The Board consists of 11 members appointed by the Governor on the recommendation of the Minister.
- (4) The appointed members must include the following—
 - (a) at least 1 person who has knowledge of, or experience in, history or the archival profession,
 - (b) at least 1 person who has knowledge of, or experience in, heritage,
 - (c) at least 1 person who has knowledge of, or experience in, First Nations cultures.
- (5) The Minister must appoint—
 - (a) 1 of the appointed members as the Chairperson of the Board, and
 - (b) 1 of the appointed members as the Deputy Chairperson of the Board.
- (6) Schedule 1 contains provisions relating to the constitution and procedure of the Board.

8 Chief Executive Officer

- (1) The Minister must, in consultation with the Board, appoint a Chief Executive Officer of Museums of History NSW.
- (2) The Chief Executive Officer is responsible for the day-to-day management of the affairs of Museums of History NSW.
- (3) The Chief Executive Officer must exercise the Chief Executive Officer's functions in accordance with the general directions, including policies, of the Board.
- (4) Anything done on behalf of Museums of History NSW by, or with the authority of, the Chief Executive Officer is taken to have been done by Museums of History NSW.
- (5) The Chief Executive Officer may participate in meetings of the Board, but is not entitled to vote at the meetings.
- (6) Schedule 2 contains further provisions relating to the Chief Executive Officer.

9 Staff

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable Museums of History NSW to exercise its functions.

Note— The *Government Sector Employment Act 2013*, section 59 provides that the persons employed, or whose services Museums of History NSW makes use of, may be referred to as officers or employees, or members of staff, of Museums of History NSW. The *Constitution Act 1902*, section 47A precludes Museums of History NSW from employing staff.

Part 3 Objects and functions of Museums of History NSW

Division 1 General

10 Objects of Museums of History NSW

The main objects of Museums of History NSW are as follows—

- (a) to collect, manage and preserve the following (the *collection*)—
 - (i) State archives,
 - (ii) significant buildings and sites,
 - (iii) objects and materials related to significant buildings and sites,
- (b) to increase—
 - (i) public knowledge and enjoyment of the collection, and
 - (ii) access to the collection,
- (c) to promote—
 - (i) knowledge and appreciation of history, and
 - (ii) the stories that shape the social, historical, political and cultural identity of New South Wales,
- (d) to achieve the objects described in paragraphs (a)–(c) across the State, including in regional and rural New South Wales.

11 Functions of Museums of History NSW

- (1) Museums of History NSW has the following functions—
 - (a) to acquire, control and manage significant buildings and sites,
 - (b) certain functions under the *State Records Act 1998*,
 - (c) functions conferred on it by this Act or another Act or law,
 - (d) functions supplementary or incidental to the exercise of its other functions, including the following—
 - (i) entering contracts or arrangements,
 - (ii) charging fees for goods or services, including permissions given,
 - (iii) applying for licences, permits or other authorities,
 - (iv) anything prescribed by the regulations.
- (2) A fee received under subsection (1)(d)(ii) is to be kept for use by Museums of History NSW.

12 Delegations

- (1) Museums of History NSW may delegate the exercise of a function, other than this power of delegation, to 1 or more of the following—
 - (a) a member of the Board,
 - (b) an advisory committee,
 - (c) the Chief Executive Officer,
 - (d) a member of the staff of Museums of History NSW.
- (2) The Chief Executive Officer may delegate or subdelegate the exercise of a function, other than this power of delegation or subdelegation, to a member of the staff of Museums of History NSW.

Division 2 Significant buildings and sites

13 Meaning of “significant building or site”

In this Act, a *significant building or site* means a building or site that, in the opinion of Museums of History NSW, holds architectural, social, historical, cultural or political significance for the history or identity of the State.

14 Powers related to significant buildings and sites

- (1) Museums of History NSW may do the following in pursuing its objects—
 - (a) acquire a building or site for—
 - (i) exhibition, or
 - (ii) restoration, or
 - (iii) maintenance, or
 - (iv) another purpose approved by the Minister,
 - (b) lend property in circumstances Museums of History NSW thinks fit,
 - (c) permit members of the public to enter a significant building or site under its control or management,
 - (d) permit the use of a significant building or site under its control or management for the following if, in the opinion of Museums of History NSW, it is appropriate for the building or site—
 - (i) a conference or meeting,
 - (ii) an educational, cultural or other activity,
 - (iii) a function or event,
 - (iv) photography or as a set for audio or video production,
 - (v) the provision of food or beverages by Museums of History NSW or another person,
 - (e) promote or provide educational services, including exhibitions, lectures and films,
 - (f) engage the services of and pay fees to persons including—
 - (i) consultants or photographers, or
 - (ii) artists, entertainers, lecturers or performers engaged to appear at a significant building or site under its control or management.
- (2) Museums of History NSW may agree to a condition being imposed in relation to the acquisition of property if the condition is not inconsistent with its objects.
- (3) The rule of law against remoteness of vesting does not apply to the condition.
- (4) Museums of History NSW may impose conditions in relation to the admission of the public to, or the use of, a significant building or site under its control or management.

15 Suitability investigations

- (1) Museums of History NSW may conduct reasonable investigations for the purpose of deciding if a building or site is suitable for control and management by Museums of History NSW as a significant building or site.
- (2) The Minister may, by written notice given to Museums of History NSW, impose conditions on the conduct of investigations under this section.
- (3) Museums of History NSW must comply with the conditions in relation to the investigation.

16 Acquisition of significant buildings and sites

- (1) The Minister may authorise Museums of History NSW to acquire a building or site.
- (2) The authorisation must be given by written notice.
- (3) The Minister may give the authorisation only if satisfied that the building or site is suitable for control and management by Museums of History NSW as a significant building or site.
- (4) Museums of History NSW may acquire the building or site in accordance with the authorisation.

17 Acquisition of significant building or site vested in public authority

- (1) The Governor may, by order published in the Gazette, declare that land vested in a public authority is divested from the public authority and vested in Museums of History NSW for the estate or interest specified in the order.
- (2) The Governor may make the order if requested by the Minister.
- (3) The Minister may request the Governor to make the order if—
 - (a) the Minister has consulted the public authority, and
 - (b) is satisfied the land is suitable for control and management by Museums of History NSW as a significant building or site.
- (4) On publication of the order in the Gazette—
 - (a) a dedication described in the order in relation to the land is revoked, and
 - (b) the land is vested in Museums of History NSW for the estate or interest specified in the order, and
 - (c) the land is discharged from all trusts affecting the land immediately before publication, other than a trust specified in the order as not being discharged, and
 - (d) personal property of the public authority, including all rights and interests in the property, is vested in Museums of History NSW if the property—
 - (i) immediately before publication, was used by the authority in connection with the land, and
 - (ii) is specified in the order, and
 - (e) an agreement or undertaking entered into by the public authority in connection with the land is taken to be entered into by Museums of History NSW, and
 - (f) a security or charge over the land is taken to have been given by Museums of History NSW, and
 - (g) a condition subject to which the public authority acquired personal property or a right or interest in personal property by gift is taken to be agreed to by Museums of History NSW under section 14(2).
- (5) A dispute between a public authority and Museums of History NSW about an order under this section must be resolved by the Premier.
- (6) In this section—

dedication includes a reservation or other setting apart of land.

public authority means—
 - (a) the Crown, or
 - (b) a Minister of the Crown, or
 - (c) a statutory body representing the Crown, or

- (d) a constructing authority under the *Public Works and Procurement Act 1912* or another Act that provides for the application of provisions of that Act.

18 Restoration or alteration of significant buildings and sites

- (1) Museums of History NSW may carry out, or arrange for the carrying out of, in relation to a significant building or site under its control or management—
 - (a) restoration works, or
 - (b) alterations or improvements.
- (2) The Minister may, by written notice given to Museums of History NSW, impose conditions on restoration works carried out under this section.
- (3) Museums of History NSW must ensure the restoration works are carried out in accordance with the conditions.
- (4) Museums of History NSW may make conservation management plans that apply to 1 or more significant buildings or sites under its control or management.
- (5) A conservation management plan must be approved by the Board.
- (6) Museums of History NSW must ensure alterations or improvements are carried out in accordance with a conservation management plan that applies to the significant building or site.

19 Disposal of property

- (1) Museums of History NSW must not dispose of property, except—
 - (a) for real property acquired without conditions—with the approval of the Governor, or
 - (b) for other property acquired without conditions—with the approval of the Minister, or
 - (c) for property acquired subject to a condition—
 - (i) in accordance with the condition, or
 - (ii) in accordance with subsection (3).
- (2) An approval of the Governor or Minister may be given in relation to particular property or a class of property.
- (3) Museums of History NSW may dispose of property acquired subject to a condition other than in accordance with the condition if—
 - (a) it resolves that the property is no longer required for its purposes, and
 - (b) the Governor approves the disposal, and
 - (c) the disposal is carried out in accordance with any conditions imposed by the Governor as part of the Governor's approval.
- (4) Museums of History NSW may dispose of property under subsection (3) by—
 - (a) selling the property and keeping for its use the proceeds of the sale, or
 - (b) exchanging the property for other property, or
 - (c) giving the property to an organisation whose rules or objects require its resources to be used wholly or predominantly for the promotion of education in Australia, or
 - (d) if Museums of History NSW is of the opinion that the property is of no commercial value—disposing of the property otherwise than for valuable consideration.
- (5) In this section—

condition means a condition to which Museums of History NSW has agreed under section 14(2).

dispose includes sell, mortgage or lease for a term of more than 6 months.

20 Acquisition of other property

- (1) Museums of History NSW may acquire property—
 - (a) to be the offices of Museums of History NSW, or
 - (b) to be residential accommodation for the caretaker of a significant building or site under its control or management, or
 - (c) for another purpose reasonably necessary for, or incidental to, the exercise of the functions of Museums of History NSW.
- (2) The Minister may, by written notice given to Museums of History NSW, impose conditions on the acquisition of property under this section.
- (3) Museums of History NSW must comply with the conditions in relation to the acquisition.

21 Throsby Park Historic Site

- (1) Museums of History NSW must not dispose of the fee simple estate in Throsby Park Historic Site, unless specifically authorised by an Act of Parliament.
- (2) Museums of History NSW may, subject to conditions it thinks fit—
 - (a) lease Throsby Park Historic Site, or
 - (b) dispose of an interest, other than the fee simple, in Throsby Park Historic Site, or
 - (c) create an estate or interest in Throsby Park Historic Site.
- (3) A lease or licence granted under this section must not have a term that, together with the term of a further lease or licence that may be granted under an option, is more than 99 years.
- (4) In this section—

Throsby Park Historic Site means the following land at Moss Vale—

 - (a) Lot K, Filed Plan 109154,
 - (b) Lot 1, DP 580481,
 - (c) Lot 4, DP 730956.

22 Exemption from Duties Act 1997

The *Duties Act 1997* does not apply in relation to—

- (a) a gift made, or to be made, to Museums of History NSW, or
- (b) the transfer of assets, rights or liabilities under section 17.

Division 3 State archives and records

23 Functions related to State archives and records

- (1) Museums of History NSW has functions under the *State Records Act 1998*, including functions relating to the following—
 - (a) records management services,
 - (b) assuming control of State records that are not currently in use,
 - (c) recovering estrays and other State records,

- (d) facilitating public access to State records,
 - (e) copying and publishing State archives,
 - (f) exercising a right of the Crown as the owner of copyright subsisting in a State archive.
- (2) In this section—
estrays has the same meaning as in the *State Records Act 1998*.

Part 4 Miscellaneous

24 Personal liability

- (1) A protected person is not personally subject to liability for anything done or omitted to be done—
 - (a) in good faith, and
 - (b) for the purpose of exercising a function under this Act.
- (2) The liability attaches to the Crown instead.
- (3) In this section—

liability—

 - (a) means civil liability, and
 - (b) includes an action, claim or demand.

protected person means—

 - (a) a member of the Board, or
 - (b) a member of an advisory committee, or
 - (c) the Chief Executive Officer, or
 - (d) a person acting under the direction of 1 of the following—
 - (i) Museums of History NSW,
 - (ii) the Board,
 - (iii) an advisory committee,
 - (iv) the Chief Executive Officer.

25 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, about a matter that is—
 - (a) required or permitted by this Act to be prescribed, or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for matters relating to the following—
 - (a) the constitution or procedures of the Board,
 - (b) advisory committees,
 - (c) the use of a significant building or site or other property of Museums of History NSW,
 - (d) services provided by Museums of History NSW,
 - (e) the parking or movement of vehicles on land controlled or managed by Museums of History NSW.
- (3) The regulations may create offences punishable by a maximum penalty of 5 penalty units.
- (4) Proceedings for an offence under the regulations are to be dealt with summarily before the Local Court.

26 Repeal of Act

The *Historic Houses Act 1980* is repealed.

Schedule 1 Constitution and procedure of Board

section 7

Part 1 Preliminary

1 Definitions

In this Schedule—

Chairperson means the Chairperson of the Board.

committee member means a member of an advisory committee.

Deputy Chairperson means the Deputy Chairperson of the Board.

Part 2 Constitution

2 Terms of office of members

- (1) A member holds office for the period of not more than 3 years specified in the member's instrument of appointment.
- (2) A member is eligible, if otherwise qualified, for reappointment.
- (3) A member must not hold office for more than 3 consecutive terms.
- (4) For the purposes of calculating the number of consecutive terms of office that a member has held, an appointment to fill a vacancy for the balance of a member's term of office must not be taken into account.

3 Remuneration

- (1) Members, acting members and committee members are entitled to be paid remuneration, including travelling and subsistence allowances, as determined by the Minister from time to time.
- (2) In this section—

acting member means a person appointed to act as a member under this Schedule, section 4.

committee member means a member of an advisory committee who is not also a member of the Board.

4 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of a member during—
 - (a) the member's absence, or
 - (b) a vacancy in the office of the member, until a person is appointed by the Governor to fill the vacancy.
- (2) The person, while acting—
 - (a) is taken to be a member, and
 - (b) has all the functions of the member.
- (3) The Minister may revoke an appointment made under this section at any time.
- (4) This section does not operate to confer on a person acting in the office of a member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.

5 Vacancy in office

- (1) The office of a member becomes vacant if the member—
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns from office by written notice addressed to the Minister, or
 - (d) is removed from office by the Minister under this section, or
 - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, unless—
 - (i) the member is on leave granted by the Board, or
 - (ii) within 6 weeks of the third meeting, the member is excused by the Board for having been absent from the meetings, or
 - (f) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for the benefit of the member's creditors, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of, or convicted elsewhere of an offence that, if committed in New South Wales, would be, an offence that is punishable by imprisonment for 12 months or more.
- (2) The Minister may remove a member from office at any time.
- (3) If the office of a member becomes vacant, a person must be appointed to fill the vacancy.

6 Chairperson and Deputy Chairperson

- (1) A member vacates office as Chairperson or Deputy Chairperson if the member—
 - (a) ceases to be a member, or
 - (b) resigns from the office by written notice addressed to the Minister, or
 - (c) is removed from the office by the Minister under this section.
- (2) The Minister may remove a member from office as Chairperson or Deputy Chairperson at any time.
- (3) If the office of Chairperson or Deputy Chairperson becomes vacant, a member must be appointed to fill the vacancy.
- (4) For the purposes of subsection (1)(a), a member does not cease to be a member on the expiry of the member's term of office if the member is reappointed as a member for a term commencing immediately after the expiration of the previous term.

7 Advisory committees

- (1) The Board may establish 1 or more advisory committees to assist the Board in the exercise of the Board's functions.
- (2) The Board must prepare and approve an advisory committee charter that provides for—
 - (a) the appointment of committee members, and
 - (b) the functions and responsibilities of advisory committees, and
 - (c) other relevant matters.
- (3) The Board must appoint committee members in accordance with the advisory committee charter.

- (4) At least 1 person appointed to the committee must also be a member of the Board.
- (5) This Schedule, sections 11, 13 and 14 apply to advisory committees and committee members in the same way the sections apply to the Board and members.

8 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) A provision of another Act does not disqualify a person from holding a specified office and also the office of a member, or from accepting and retaining remuneration payable to the person under this Part, section 3, merely because the provision—
 - (a) requires a person who is the holder of the specified office to devote the whole of the person's time to the duties of the office, or
 - (b) prohibits the person from engaging in employment outside the duties of the office.

Part 3 Procedure

9 General procedure

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

10 First meeting

The Minister may call the first meeting of the Board in the way the Minister thinks fit.

11 Quorum

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

12 Presiding member

- (1) The Chairperson must preside at a meeting of the Board, unless the Chairperson is absent.
- (2) If the Chairperson is absent—
 - (a) the Deputy Chairperson must preside, or
 - (b) if the Deputy Chairperson is absent—1 of the members present at the meeting, as elected by the other members present, must preside.
- (3) The person presiding at a meeting has—
 - (a) a deliberative vote, and
 - (b) in the event of an equality of votes—a second or casting vote.

13 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.

14 Minutes

The Board must keep full and accurate minutes of the proceedings of each meeting of the Board.

15 Disclosure of pecuniary interests

- (1) A member must disclose the nature of a pecuniary interest at a meeting of the Board as soon as possible after the relevant facts have come to the member's knowledge.
- (2) A member has a pecuniary interest if—
 - (a) the 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 member's duties in relation to the consideration of the matter.
- (3) A disclosure is a sufficient disclosure of the nature of an interest in a matter relating to a corporation or other body, or to a person, which may arise after the date of the disclosure and which is required to be disclosed under subsection (1), if the disclosure is that the member—
 - (a) is a member of, or employed by, a specified corporation or other body, or
 - (b) is a partner of, or employed by, a specified person, or
 - (c) has another interest relating to a specified corporation or other body, or to a specified person.
- (4) Particulars of a disclosure made under this section must be recorded by the Board in a book that is—
 - (a) kept for the purpose of recording disclosures, and
 - (b) open to inspection at all reasonable hours by a person on payment of the fee determined by the Board.
- (5) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Board otherwise determines—
 - (a) be present during a deliberation of the Board about the matter, or
 - (b) take part in a decision of the Board about the matter.
- (6) For the purposes of the making of a determination under subsection (5), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not—
 - (a) be present during a deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making of the determination.
- (7) A contravention of this section does not invalidate a decision of the Board.
- (8) This section applies to a committee member and the advisory committee in the same way it applies to a member and the Board.

16 Transaction of business outside meetings or by telephone or other means

- (1) The Board may transact its business by the circulation of papers, including by electronic means, among all members for the time being.
- (2) If the Board transacts business by the circulation of papers, a written resolution, approved in writing by a majority of members, is taken to be a decision of the Board made at a meeting of the Board.
- (3) The Board may transact its business at a meeting at which 1 or more members participate by telephone or other electronic means, provided a member who speaks on a matter can be heard by the other members.
- (4) The Chairperson, Deputy Chairperson and each other member have the same voting rights as they would have at an ordinary meeting of the Board for the purposes of—

- (a) the approval of a resolution under subsection (2), or
 - (b) a meeting held in accordance with subsection (3).
- (5) A resolution approved under subsection (2) must be recorded in the minutes of the meetings of the Board.

Schedule 2 Chief Executive Officer

section 8

1 Term of office of Chief Executive Officer

- (1) The Chief Executive Officer holds office for the period of not more than 3 years specified in the Chief Executive Officer's instrument of appointment.
- (2) The Chief Executive Officer is eligible, if otherwise qualified, for reappointment.

2 Remuneration

- (1) The employment of the Chief Executive Officer is, subject to this Act and the regulations, to be governed by a contract of employment between the Chief Executive Officer and the Minister.
- (2) The office of Chief Executive Officer is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to the office.

3 Acting Chief Executive Officer

- (1) The Minister may, from time to time, and in consultation with the Board, appoint a person to act in the office of Chief Executive Officer during—
 - (a) the Chief Executive Officer's absence, or
 - (b) a vacancy in the office of Chief Executive Officer.
- (2) The person, while acting—
 - (a) is taken to be the Chief Executive Officer, and
 - (b) has all the functions of the Chief Executive Officer.
- (3) The Minister may revoke an appointment made under this section at any time.
- (4) An acting Chief Executive Officer is entitled to be paid remuneration, including travelling and subsistence allowances, as determined by the Minister from time to time.

4 Vacancy in office

- (1) The office of Chief Executive Officer becomes vacant if the Chief Executive Officer—
 - (a) dies, or
 - (b) completes a term of office and is not reappointed, or
 - (c) resigns from office by written notice addressed to the Minister, or
 - (d) is removed from office by the Minister under this section, or
 - (e) becomes bankrupt, or
 - (f) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, or
 - (g) compounds with the Chief Executive Officer's creditors, or
 - (h) makes an assignment of remuneration for the benefit of the Chief Executive Officer's creditors, or
 - (i) becomes a mentally incapacitated person, or
 - (j) is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or

- (k) is convicted elsewhere of an offence that, if committed in New South Wales, would be, an offence that is punishable by imprisonment for 12 months or more.
- (2) The Minister may, in consultation with the Board, remove the Chief Executive Officer from office at any time.
- (3) If the office of Chief Executive Officer becomes vacant, a person must be appointed to fill the vacancy.

Schedule 3 Savings, transitional and other provisions

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not, before its publication—
 - (a) affect the rights of a person in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done.
- (6) In this section—

person does not include—

 - (a) the State, or
 - (b) an authority of the State.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

assets means the assets vested in, or otherwise held by, both of the following immediately before the commencement day—

- (a) the Trust,
- (b) the former trustees on behalf of the Trust.

commencement day means the day on which this Part commences.

former trustees means the trustees of the Trust appointed under the repealed Act, section 6.

liabilities means the liabilities of the Trust, including liabilities enforceable against a former trustee in their capacity as trustee, immediately before the commencement day.

repealed Act means the *Historic Houses Act 1980* as in force before the commencement day.

rights means the rights of the Trust, including rights enforceable by a former trustee in their capacity as trustee, immediately before the commencement day.

Trust means the Historic Houses Trust of New South Wales established under the repealed Act.

3 Dissolution of Trust

- (1) The Trust is dissolved.
- (2) The persons who were trustees of the Trust immediately before the Trust's dissolution cease to be trustees, but are eligible, if otherwise qualified, to be appointed as members of the Board of Museums of History NSW.
- (3) No compensation is payable for a loss of office under this section.

4 References to Trust and former trustees

A reference in the following to the Trust or the former trustees is to be read as a reference to Museums of History NSW—

- (a) another Act or law,
- (b) an instrument related to a gift that would have vested in the Trust had this Act not commenced,
- (c) a document.

5 Vesting of assets, liabilities and rights

- (1) On and from the commencement day—
 - (a) the assets vest in Museums of History NSW without the need for a further conveyance, transfer, assignment or assurance, and
 - (b) the liabilities and rights become the liabilities and rights of Museums of History NSW, and
 - (c) all proceedings relating to the assets, liabilities or rights commenced by or against the former trustees and pending before the commencement day are taken to be pending proceedings by or against Museums of History NSW, and
 - (d) an act, matter or thing done or not done by, to or for the Trust in relation to the assets, liabilities or rights before the commencement day is taken to have been done or not done by, to or for Museums of History NSW, and
 - (e) Museums of History NSW has the entitlements and obligations, whether actual or potential, of the Trust and the former trustees in relation to the assets, liabilities and rights that the Trust and the former trustees would have had if the Trust had not been dissolved, and
 - (f) Museums of History NSW is deemed to have agreed under this Act, section 14(2) to each condition subject to which the Trust acquired property or a right or interest.
- (2) No assignment of a lease is required as a result of this section.
- (3) The operation of this section is not to be regarded as—
 - (a) a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset, liability or right, or
 - (c) an event of default under a contract or other instrument, or
 - (d) giving rise to a remedy by a party to an instrument, or as causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, liability or right.

6 Appointment of first Chief Executive Officer

Despite this Act, section 8, the Minister may appoint the first person to office as Chief Executive Officer without consulting the Board if all of the members of the Board have not been appointed.

Schedule 4 Amendment of State Records Act 1998 No 17

[1] Section 3 Definitions

Omit section 3(1), definition of *access direction*. Insert instead—
access direction means a CPA direction or OPA direction.

[2] Section 3(1), definition of “Authority”

Omit the definition. Insert instead—
Authority means the State Records Authority NSW constituted by this Act.

[3] Section 3(1)

Insert in alphabetical order—
access provider—see section 60(1).
CPA direction means a direction that a record is closed to public access under this Act.
OPA direction means a direction that a record is open to public access under this Act.

[4] Section 3(1), definition of “public office”

Omit the definition. Insert instead—
public office—

- (a) means each of the following—
 - (i) a department, office, commission, board, corporation, agency, service or instrumentality exercising a function of a branch of the Government of the State,
 - (ii) a body, whether incorporated or not, established for a public purpose,
 - (iii) a council, county council or joint organisation under the *Local Government Act 1993*,
 - (iv) the Cabinet and the Executive Council,
 - (v) the office and official establishment of the Governor,
 - (vi) a House of Parliament,
 - (vii) a court or tribunal,
 - (viii) a State collecting institution,
 - (ix) a Royal Commission or Commission of Inquiry,
 - (x) a State owned corporation,
 - (xi) the holder of an office under the Crown,
 - (xii) a political office holder, other than the Leader of the Opposition in the Legislative Assembly, within the meaning of the *Members of Parliament Staff Act 2013*,
 - (xiii) a body, office or institution, whether or not it is a public office under another subparagraph of this paragraph, that exercises a public function and is declared by the regulations to be a public office for the purposes of this Act,
- (b) but does not include—
 - (i) the Workers Compensation Nominal Insurer established under the *Workers Compensation Act 1987*, or
 - (ii) a justice of the peace within the meaning of the *Justices of the Peace Act 2002*, or

- (iii) another individual or a private sector entity, except to the extent that section 8 applies.

[5] Sections 3(1), definition of “State archive”, 7, 14 and 19, Parts 4–6 and section 76

Omit “Authority”, “The Authority” and “the Authority” wherever occurring.

Insert instead “Museums of History NSW”.

[6] Section 3(1), definition of “State collecting institution”, paragraph (c)

Omit “Historic Houses Trust of New South Wales”.

Insert instead “Museums of History NSW”.

[7] Section 3(1), definition of “State record”

Omit the definition. Insert instead—

State record means a record made or received by a person, whether before or after the commencement of this section—

- (a) in the course of exercising official functions in a public office, or
- (b) for a purpose of a public office, or
- (c) for the use of a public office.

[8] Section 5

Omit the section. Insert instead—

5 Application of Act to State collecting institutions

- (1) This Act does not apply to a State record that is a private record in the collection of a State collecting institution.
- (2) A State record that is a private record in the collection of a State collecting institution ceases to be a State record if the institution ceases to exist.
- (3) Subject to subsections (4) and (5), Parts 2, 4 and 6 do not apply to a State record taken into the collection of a State collecting institution, other than a prescribed State collecting institution, before 1 January 1999.
- (4) The Authority may enter into an agreement with a State collecting institution that provides that 1 or more provisions of Part 2 that relate to functions conferred on the Authority apply, with or without modification, to records taken into the institution’s collection before 1 January 1999.
- (5) Museums of History NSW may enter into an agreement with a State collecting institution that provides that 1 or more provisions of Part 2, 4 or 6 that relate to functions conferred on Museums of History NSW apply, with or without modification, to records taken into the institution’s collection before 1 January 1999.
- (6) If a provision of this Act would otherwise require Museums of History NSW to enter into an agreement with, or obtain the consent of, Museums of History NSW, the agreement is taken to have been entered into, or the consent obtained, without further steps needing to be taken.
- (7) In this section—
private record means a record that is only a State record because it was taken into the collection of a State collecting institution in the circumstances set out in section 3(1), definition of *State record*.

[9] Section 7 Meaning of public office “responsible” for a record

Omit “and kept” wherever occurring in section 7(2).

[10] Section 12(5) and (6)

Insert after section 12(4)—

- (5) The Authority may issue a notice to a public office requiring the public office to, as directed by the notice—
 - (a) conduct an assessment of its record-keeping processes and records management program, and
 - (b) provide the Authority with a report on the findings arising from the assessment.
- (6) If the Authority is not satisfied with a report, or the findings of a report, referred to in subsection (5), the Authority may include information about this in the Authority’s annual report under the *Annual Reports (Statutory Bodies) Act 1984*.

[11] Section 17

Omit the section. Insert instead—

17 Disputes about operation of Act

- (1) If there is a dispute between a public office and the Authority or Museums of History NSW about the operation of this Act as it relates to a function conferred on the Authority or Museums of History NSW, either party may request a review of the matter by—
 - (a) the Ministers responsible for each party, or
 - (b) if the same Minister is responsible for both parties—the Minister responsible for both parties.
- (2) The parties must make a reasonable effort to resolve the dispute before requesting a review.
- (3) A decision of the Authority to permit or not to permit, or to approve a practice or procedure involving, an act referred to in section 21(1) may not be reviewed.
- (4) If the dispute is not resolved by the responsible Minister or Ministers, it must be referred to—
 - (a) the Premier, or
 - (b) another Minister designated by the Premier in a particular case.
- (5) Both parties must comply with a direction given by the Premier or the designated Minister to resolve the dispute.

[12] Section 18

Omit the section. Insert instead—

18 Special agreements with public offices exercising inter-government functions

- (1) This section applies to public offices that exercise functions (*inter-government functions*) jointly or in cooperation with a public body of the Commonwealth, another State or a Territory, under a law or an agreement or other arrangement between governments.

- (2) The Authority or Museums of History NSW may, as it relates to functions conferred on the Authority or Museums of History NSW, respectively, enter into an agreement with the public office that provides for the rights and obligations of the public office in relation to making, keeping, protecting, controlling or providing access to records relating to the exercise of inter-government functions.
- (3) The agreement may exclude or modify the application of 1 or more provisions of Part 2, 4 or 6 to specified records.
- (4) A term of the agreement prevails over a provision of this Act to the extent of an inconsistency.

[13] Section 21 Protection measures

Omit “50 penalty units” from section 21(1). Insert instead “100 penalty units”.

[14] Section 24

Omit the section. Insert instead—

24 Consent of public office required before records can be disposed of

- (1) Museums of History NSW must not dispose, or permit the disposal, of a State record in the possession of Museums of History NSW, unless the public office responsible for the record has consented to its disposal.
- (2) This section does not apply to a record once it becomes a State archive.

[15] Section 27, heading

Omit “**Authority’s entitlement**”. Insert instead “**Museums of History NSW entitled**”.

[16] Section 28 Records more than 25 years old presumed not in use

Omit “Authority’s” from section 28(4).

[17] Section 32 Museums of History NSW can be required to take control of records in some cases

Insert after section 32(3)—

- (4) Each public office must make arrangements with Museums of History NSW for, and provide information to Museums of History NSW in connection with, the transfer of State records under this section as prescribed by the regulations.

[18] Section 33, heading

Omit “**Authority’s entitlement**”. Insert instead “**Entitlement**”.

[19] Section 33

Omit “The Authority’s entitlement to control of” wherever occurring.

Insert instead “The entitlement that Museums of History NSW has to control”.

[20] Section 36A

Omit the section. Insert instead—

36A Arrangements to copy, publish or give access to State archives

- (1) Museums of History NSW may enter into an arrangement (an *access arrangement*) with a person, including a person outside the State, under which Museums of History NSW gives the person access to State archives that are

open to public access under this Act to enable the person to make, publish or give other persons access to, copies of the State archives.

- (2) The access arrangement may—
 - (a) allow the person to alter copies of the State archives, or
 - (b) provide for the way the person can make, publish or give other persons access to, copies of the State archives, including arrangements for publishing or giving access to copies outside the State, or
 - (c) allow the person to charge a fee for publishing or giving access to copies of the State archives.
- (3) The access arrangement may be a commercial arrangement under which the person is required to pay a fee to Museums of History NSW.
- (4) If the access arrangement allows the person to give other persons access to copies of the State archives, section 62 extends to the giving of access by the person under the arrangement in the same way the section applies to the giving of access to a record under this Act by an access provider.
- (5) This section does not—
 - (a) give Museums of History NSW power to override a right in the nature of copyright, or
 - (b) give a party to an access arrangement power to do something that would be an infringement of copyright.

[21] Part 6 and section 73

Omit “30 years” wherever occurring. Insert instead “20 years”.

[22] Section 50 Open access period for records

Omit the note.

[23] Section 51

Omit the section. Insert instead—

51 Access directions for records in open access period

- (1) A State record is deemed to be the subject of an OPA direction on the commencement of the record’s open access period, unless the record is already the subject of a CPA direction.
- (2) A public office may give a CPA direction for a State record that it is responsible for, whether before or after the commencement of the record’s open access period.
- (3) A CPA direction—
 - (a) does not affect other entitlements to access that arise independently of this Act, and
 - (b) does not prevent access to the record from being given voluntarily.
- (4) Any person is entitled to be given access to a record that is open to public access as provided by this Part.
- (5) This Part does not prevent the giving of access to a State record independently of this Act, whether or not the record is in the open access period.

[24] Section 54 Application to open records to public access

Omit the section.

[25] Section 55 Procedures for giving and revoking access directions

Omit section 55(6). Insert instead—

- (6) A public office that gives a CPA direction for a State record must provide its reasons for giving the direction to Museums of History NSW if requested.

[26] Section 60 The giving of access

Omit section 60(1). Insert instead—

- (1) The person required to give access to a State record under this Act (the *access provider*) is—
- (a) if the record is under the control of Museums of History NSW—
Museums of History NSW, or
- (b) otherwise—the public office that has control of the record.

[27] Section 62 Protection from liability when access given

Insert “, including under an access arrangement” after “under this Act”.

[28] Section 62(3)

Insert after section 62(2)—

- (3) In this section—
access arrangement has the same meaning as in section 36A.

[29] Section 63 Establishment of the Authority

Omit “the State Archives and Records Authority of New South Wales” from section 63(1).
Insert instead “State Records Authority NSW”.

[30] Section 63(3)

Omit the subsection.

[31] Section 66

Omit the section. Insert instead—

66 Principal functions of the Authority

- (1) The Authority has the following functions—
- (a) to oversee record-keeping by public offices of the State, including by determining standards and providing advice,
- (b) to identify State records that have enduring value and should be retained as State archives,
- (c) other functions conferred on it by this Act or another Act or law.
- (2) The Authority has power to do all things that are supplemental or incidental to the exercise of the Authority’s functions.
- (3) The Authority has power to charge and receive fees for a service provided by the Authority under this Act.

[32] Section 69 Establishment of Board

Omit section 69(1)–(3). Insert instead—

- (1) There is a Board of the Authority.
- (2) The Board consists of 9 members, including—
 - (a) the Chief Executive Officer of Museums of History NSW, or a delegate of the Chief Executive Officer, and
 - (b) the following members appointed by the Governor—
 - (a) 3 persons nominated by the Minister who administers this Act,
 - (b) 2 persons nominated by the Minister who administers the *Government Sector Employment Act 2013*, to represent Public Service agencies,
 - (c) 1 person nominated by the Minister who administers the *State Owned Corporations Act 1989*, to represent State owned corporations,
 - (d) 1 member or officer of either House of Parliament nominated jointly by the President of the Legislative Council and the Speaker of the Legislative Assembly,
 - (e) 1 judge of a court of the State nominated by the Chief Justice of New South Wales.
- (3) In relation to the persons nominated by the Minister who administers this Act—
 - (a) 1 must have knowledge of, or experience in, the use of State records, and
 - (b) 1 must have knowledge of, or experience in, history, and
 - (c) 1 must have knowledge of, or experience in, First Nations cultures.

[33] Section 72

Omit the section. Insert instead—

72 Injunctions relating to contravention of Act

- (1) The Supreme Court may, on the application of the following, grant an injunction relating to the contravention or possible contravention of a provision of this Act—
 - (a) for a provision relating to functions conferred on the Authority—the Authority,
 - (b) for a provision relating to functions conferred on Museums of History NSW—Museums of History NSW.
- (2) The terms of the injunction may—
 - (a) restrain a person from engaging in conduct that would contravene a provision of this Act, or
 - (b) require a person to do an act or thing to remedy conduct that contravenes a provision of this Act.
- (3) The Supreme Court may grant an interim injunction pending determination of an application made under this section.
- (4) The Supreme Court may discharge or vary an injunction or interim injunction granted under this section.

- (5) The Supreme Court may not require an undertaking as to damages or costs in relation to an application made under this section.

[34] Section 73, heading

Omit “**Authority’s duty**”. Insert instead “**Duty**”.

[35] Section 74

Omit the section. Insert instead—

74 Personal liability

- (1) A protected person is not personally subject to liability for anything done or omitted to be done—
- (a) in good faith, and
 - (b) for the purpose of exercising a function under this Act.
- (2) The liability attaches to the Crown instead.
- (3) In this section—
- liability*—
- (a) means civil liability, and
 - (b) includes an action, claim or demand.
- protected person* means—
- (a) a member of the Board, or
 - (b) the Director, or
 - (c) a person acting under the direction of the Authority, the Board or the Director.

[36] Section 75

Omit the section. Insert instead—

75 Copying and publishing of State archives

- (1) Museums of History NSW may make copies of, or publish, a State archive.
- (2) Museums of History NSW may certify a copy it has made of a State archive as a true copy.
- (3) A certified true copy—
- (a) has the same validity and effect as the original State archive, and
 - (b) is admissible in evidence in legal proceedings as if the copy were the original.
- (4) This section does not give Museums of History NSW power to—
- (a) override a right in the nature of copyright, or
 - (b) do something that would be an infringement of copyright.

[37] Section 77 Certificate as to loss or destruction of State record

Insert “or Museums of History NSW” after “the Authority”.

[38] Section 78 Proceedings for offences

Omit “2 years” from section 78(2). Insert instead “3 years”.

[39] Schedule 3 Savings and transitional provisions

Insert after Part 5—

Part 6 Provisions consequent on enactment of Museums of History NSW Act 2022

18 Definitions

In this Part—

amending Act means the *Museums of History NSW Act 2022*.

commencement day means the day on which the amending Act, Schedule 3 commences, in whole or in part.

transferred function means a function of Museums of History NSW under this Act, section 19, Parts 4–6 or section 76 that was a function of the Authority before the commencement day.

19 Alteration of name of Authority

The *Interpretation Act 1987*, section 53(1) applies to the alteration of the name of the Authority effected by the amendment of section 63(1) by the amending Act.

20 Alteration of constitution of Authority

The *Interpretation Act 1987*, section 53(2) applies to the alteration of the constitution of the Authority effected by the amendment of section 69 by the amending Act.

21 Transfer of certain functions of Authority to Museums of History NSW

(1) On and from the commencement day—

- (a) all State archives, State records and other assets controlled or held by the Authority in connection with the exercise of a transferred function are transferred to the control and management of Museums of History NSW, and
- (b) the liabilities and rights of the Authority relating to a transferred function become the liabilities and rights of Museums of History NSW, and
- (c) all proceedings relating to a transferred function commenced by or against the Authority and pending before the commencement day are taken to be proceedings pending by or against Museums of History NSW, and
- (d) all contracts, agreements, arrangements and undertakings entered into with the Authority in connection with a transferred function and in force immediately before the commencement day are deemed to be entered into with Museums of History NSW, and
- (e) an act, matter or thing done or not done in connection with a transferred function by or on behalf of the Authority before the commencement day is, to the extent that the act, matter or thing has force or effect, taken to have been done or not done by or on behalf of Museums of History NSW, and
- (f) Museums of History NSW has the entitlements and obligations, whether actual or potential, of the Authority in relation to a transferred function.

- (2) The operation of this clause is not to be regarded as—
- (a) a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of an asset, liability or right, or
 - (c) an event of default under a contract or other instrument, or
 - (d) giving rise to a remedy by a party to an instrument, or as causing or permitting the termination of an instrument, because of a change in the beneficial or legal ownership of an asset, liability or right.

[Second reading speech made in—
Legislative Assembly on 22 June 2022
Legislative Council on 11 August 2022]