

**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.
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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 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.

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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.

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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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