

[Act 2001 No 10]



New South Wales

Nature Conservation Trust Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to establish a non-government body corporate, to be known as the Nature Conservation Trust of New South Wales (*the Trust*), to encourage conservation of natural heritage and cultural heritage associated with natural heritage.

The Trust will be able to negotiate:

- (a) conservation agreements under the *National Parks and Wildlife Act 1974*, to be entered into by a landholder and the Minister administering that Act (*conservation agreements*), and
- (b) property agreements under the *Native Vegetation Conservation Act 1997*, to be entered into by a landholder and the Director-General of the Department of Land and Water Conservation (*property agreements*).

The Trust may also be a party to those agreements. Conservation agreements and

* Amended in committee—see table at end of volume.

property agreements are already provided for under the relevant Act.

The Trust will monitor compliance with the agreements that it has negotiated and may enforce compliance with those to which it is a party. It will provide ongoing managerial and technical assistance to the landholders concerned. It may also provide financial assistance if the Trust is a party to the relevant agreement and considers it appropriate to do so.

In addition, the Trust and landholders will be able to enter into new agreements (*Trust agreements*) under the proposed Act. The purpose of these new agreements is to manage the land to which the agreement relates so as to protect the natural heritage (and any cultural heritage associated with the natural heritage) of that land.

The Trust will also operate a *Revolving Fund Scheme*, under which it will:

- (a) buy or otherwise acquire land that is significant for the conservation of natural heritage (and any cultural heritage associated with natural heritage), and
- (b) arrange for a covenant (which may, but need not, take the form of a conservation agreement or a property agreement) on the land to protect that heritage, and
- (c) sell or lease the land subject to that covenant, and
- (d) use the proceeds of the sale or lease for the acquisition of further land referred to in paragraph (a) for the purposes of dealing with that land in accordance with paragraphs (b) and (c) and using the proceeds of the sale or lease as set out in this paragraph.

The Trust will provide education to the public on issues of conservation, land management and ecological sustainability.

Outline of provisions

Part 1 Preliminary

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

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

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 provides that notes contained in the proposed Act do not form part of the proposed Act.

Clause 5 excludes land that is a State forest, national forest, flora reserve or timber reserve under the *Forestry Act 1916* and land vested in, or owned, controlled or managed by, the Forestry Commission constituted under that Act from the operation of the proposed Act.

Clause 6 makes it clear that the term *conservation priorities*, for the purposes of the proposed Act, includes criteria for identifying land that is of such significance, in relation to the conservation of cultural heritage or natural heritage or both, as to warrant (among other things) the making of a conservation agreement, property agreement or Trust agreement in respect of the land.

Clause 7 explains the operation of the Revolving Fund Scheme for the purposes of the proposed Act.

Part 2 Nature Conservation Trust of New South Wales

Division 1 Constitution, objects and functions of Trust

Clause 8 constitutes the Nature Conservation Trust of New South Wales as a body corporate.

Clause 9 makes it clear that the Trust does not represent the Crown and cannot incur any liability on behalf of the State.

Clause 10 provides that the objects of the Trust are the following:

- (a) to encourage landholders to enter into co-operative arrangements for the management and protection of urban and rural land in private occupation that is significant for the conservation of natural heritage (and any cultural heritage associated with natural heritage),
- (b) to provide mechanisms for achieving conservation of that heritage,
- (c) to promote public knowledge, appreciation and understanding of:
 - (i) natural heritage (and any cultural heritage associated with natural heritage), and
 - (ii) the importance of conserving that heritage.

Clause 11 provides that the Trust has the functions conferred or imposed on it by the proposed Act or any other Act or law. The clause also sets out some specific functions of the Trust. These include the following:

- (a) to operate the Revolving Fund Scheme referred to above,

- (b) to negotiate, enter into, monitor and enforce compliance with Trust agreements under the proposed Act,
- (c) to negotiate, monitor and enforce compliance with conservation agreements and property agreements (and, where the Trust considers it appropriate, to be a party to any such agreement),
- (d) in relation to any conservation agreement or property agreement negotiated by the Trust:
 - (i) to provide ongoing managerial and technical assistance to landholders who are parties to the agreement, and
 - (ii) to provide financial assistance to such landholders if the Trust considers it appropriate, and
 - (iii) to arrange for the development and review of management strategies (in respect of land the subject of a property agreement) and plans of management (in respect of land the subject of a conservation agreement),
- (e) to provide technical, financial and other assistance to landholders generally, when the Trust considers it appropriate to do so, for the purpose of facilitating the achievement of conservation goals.

Clause 12 provides that the Trust has the power to do all things necessary or convenient to be done for or in connection with the exercise of its functions. The clause also sets out some specific powers of the Trust. These include the power to do the following:

- (a) to buy, sell, hold, mortgage, lease or otherwise deal with land,
- (b) by mutual agreement with the Crown, to surrender land vested in the Trust (whether on trust or otherwise) to the Crown to be used for a purpose specified by the Trust,
- (c) to act as trustee of money or other property vested in the Trust,
- (d) to use money of the Trust to further the objects of the Trust or to meet the Trust's commitments under any agreement to which the Trust is a party,
- (e) to invest money of the Trust not immediately required for the furtherance of its objects in the same way as trustees may invest trust funds under the *Trustee Act 1925*.

Clause 13 provides for the keeping and use of the seal of the Trust.

Clause 14 enables the Trust to acquire property by gift, devise or bequest and to agree to, and carry out, any conditions of such an acquisition that are not inconsistent with the functions of the Trust.

Clause 15 prohibits the Trust from dealing with property acquired subject to a condition to which the Trust has agreed otherwise than in accordance with that condition. However, if the Trust decides that any such property is no longer required for the purposes of the Trust, the Trust may dispose of it in contravention of the condition, and it may manage real property in contravention of the condition if, after acquiring the property, it is of the opinion that management of the property in compliance with the condition would be inefficient or detrimental to conservation of the natural heritage (or any cultural heritage associated with the natural heritage) of the property.

Clause 16 requires the Trust to provide the Minister with annual reports on its proceedings for presentation to Parliament. The reports are to include copies of the Trust's financial statements and accounts and an auditor's report on those statements and accounts.

Division 2 Management and staff of Trust

Clause 17 provides for the affairs of the Trust to be managed by a Board (*the Board*).

Clause 18 provides that the Board is to have 10 part-time members, at least one of whom is to be an Aboriginal.

Two members are to be officers of Government agencies (the National Parks and Wildlife Service and the Department of Land and Water Conservation) and the remaining 8 are to bring varying specified capacities to the Board (such as the capacity to increase public knowledge, understanding and appreciation of the importance of conservation of natural heritage by landholders and other community members, and the capacity to attract and maintain financial support for the Trust).

In appointing the members of the Board, the Minister is to ensure (as far as is possible) that the Board as a whole will have all the capacities specified in the proposed section.

Clause 19 requires the Minister to invite written nominations of persons for appointment to the 8 non-government positions on the Board.

Clause 20 enables the Trust to employ staff (including a Chief Executive Officer) and engage consultants. The clause makes it clear that the staff of the Trust are not public servants.

Division 3 Business plan of Trust

Clause 21 requires the Trust to conduct its activities, as far as is practicable, in accordance with a business plan prepared in accordance with the proposed Act.

Clause 22 requires the Trust to submit a draft business plan to the Minister no later than 6 months after the commencement of the proposed section. The clause specifies certain matters that are to be dealt with by the plan (such as the conservation priorities of the Trust, the strategy that the Trust proposes to adopt for the immediately following 5 years in furtherance of its objects, and the performance indicators by which the Trust's achievement of its objectives is to be measured) and requires the plan to be consistent with any relevant regulations and with certain guidelines.

Clause 23 requires the Minister, in consultation with the Minister for Land and Water Conservation, to determine whether the conservation priorities specified in the plan are consistent with the regulations and guidelines referred to in proposed section 22. If the Minister refuses to endorse those conservation priorities, the Minister must return the plan with written reasons for the refusal. If the plan is not so returned within 28 days after it is delivered to the Minister, the Minister is taken to have endorsed the conservation priorities.

Clause 24 requires the Trust to revise the draft business plan and resubmit it to the Minister if the Minister has refused to endorse the conservation priorities set out in it. The process of consultation and endorsement or refusal, and revising and resubmission, applies to a revised draft plan in the same way as it applies to an original draft plan.

Clause 25 provides that the Trust may amend any endorsed conservation priority set out in its business plan only if the Minister, in consultation with the Minister for Land and Water Conservation, approves the amendment.

Clause 26 requires the submission of a new draft business plan at 5-yearly intervals, although the Trust may submit new draft business plans more frequently if it chooses to do so.

Division 4 Financial matters

Clause 27 provides that the financial year of the Trust is the year commencing on 1 July.

Clause 28 requires the Trust to establish such accounts as it thinks appropriate for the money received and expended by the Trust (the *Trust Accounts*). The Trust Accounts are to be established with an authorised deposit-taking institution. The proposed section specifies certain money that must be paid into the Trust Accounts and certain purposes for which money in the Trust Accounts may be applied.

Clause 29 provides an exemption from the *Duties Act 1997* in respect of land acquired or leased (whether as lessor or lessee) by the Trust for the purposes of the proposed Act and land disposed of by the Trust under the proposed Act.

Part 3 Trust agreements

Clause 30 enables the Trust to enter into Trust agreements with landholders for the purpose of managing the land the subject of the agreement so as to protect the natural heritage (and any cultural heritage associated with the natural heritage) of that land. Any such agreement requires the written consent of:

- (a) each landholder, and
- (b) each person who has an interest in the land arising from a mortgage, charge or positive covenant, and
- (c) if the land is the subject of a Crown lease—the lessor.

However, if a landholder whose written consent to a proposed Trust agreement is required cannot be found or identified after “diligent inquiry”, the agreement may be entered into without that consent.

Clause 31 specifies the meaning of *diligent inquiry* for the purposes of proposed section 30.

Clause 32 provides that a Trust agreement is binding on the parties to it. It also provides that such an agreement does not operate to extinguish any native title rights and interests existing in relation to the land the subject of the agreement immediately before the agreement was entered into.

Clause 33 specifies the matters for which a Trust agreement may make provision. Provision may be made for any one or more of the following:

- (a) the identification of any land (including land of significance for the preservation or protection of specified flora or fauna) that is to be set aside for conservation or rehabilitation purposes,
- (b) restrictions on the use that can be made of specified areas of land,

- (c) requiring the landholder to permit access to specified areas of land by specified persons,
- (d) requiring the landholder to permit specified persons to carry out specified actions on specified areas of land,
- (e) requiring the Trust to carry out specified actions,
- (f) requiring the landholder to carry out specified actions,
- (g) the provision of financial, technical or other assistance to a landholder by or on behalf of the Trust,
- (h) specifying the manner in which any assistance provided to the landholder under the agreement must be applied by the landholder,
- (i) specifying any penalties that may apply if any party breaches the agreement,
- (j) dispute resolution,
- (k) any other matters which the parties to the agreement consider appropriate.

The clause also makes it clear that a Trust agreement must be consistent with the Trust's conservation priorities (as specified in the Trust's business plan) and with the regulations.

Clause 34 provides that a Trust agreement takes effect from the date specified in the agreement and remains in force for such period as is also specified in the agreement. However, a Trust agreement may be terminated by subsequent agreement of the parties to it.

Clause 35 provides for the variation of a Trust agreement by the parties to it.

Clause 36 permits (but does not require) registration of a Trust agreement in the General Register of Deeds and (if appropriate) in the Register kept under the *Real Property Act 1900* or in any official record relating to Crown lands that relates to the land to which the agreement applies.

Clause 37 provides that a Trust agreement that has been registered and is in force binds the successors in title to the landholder who entered into the agreement. A successor in title is taken to have notice of a registered agreement and to be a party to the agreement for the purpose of effecting a variation or termination of it in accordance with the proposed Act. *Successors in title* includes persons in possession of the land to which the agreement relates pursuant to an encumbrance entered into before the registration of the agreement.

Clause 38 provides that proceedings for the enforcement of Trust agreements are to be taken in the Land and Environment Court. However, damages are not to be awarded against a landholder for a breach of a Trust agreement unless the breach

arose from an intentional or reckless act or omission by the landholder in respect of the land (or by a previous landholder, if the landholder at the time of the proceedings had notice of the previous landholder's act or omission).

Part 4 Miscellaneous

Clause 39 requires the Trust to keep a written register of all Trust agreements, and all conservation agreements and property agreements to which the Trust is a party.

Clause 40 permits the Trust to delegate any of its functions (other than the power of delegation) to any member of the staff of the Trust.

Clause 41 permits the Trust to recover any money due to it as a debt in a court of competent jurisdiction.

Clause 42 specifies the way in which a document may be served on persons for the purposes of the proposed Act.

Clause 43 elaborates on proposed section 42 in relation to the service of documents on native title holders.

Clause 44 provides for the winding up of the Trust. Except as otherwise provided by the proposed section or the regulations, the Trust may be wound up in the same way as a company registered under the *Corporations Law* may be wound up, and Chapter 5 of that Law applies to the winding up or dissolution with such modifications as may be prescribed by the regulations. However, if there is outstanding property of the Trust after it is wound up, the liquidator may transfer the property to any other body having as its principal object the promotion of the conservation of natural or cultural (or natural and cultural) heritage.

Clause 45 makes it clear that the proposed Act does not prevent a landholder who is a party to a conservation agreement, property agreement or Trust agreement from seeking financial or other assistance from the Trust or the Government even though the Trust or a representative of Government is not a party to the agreement concerned.

Clause 46 enables the Governor to make regulations for the purposes of the proposed Act. In particular, regulations may be made for or with respect to establishing conservation priorities, to any remuneration payable to members of the Board and to the winding up of the Trust.

Clause 47 is a formal provision that gives effect to Schedule 2 (Savings and transitional provisions).

Clause 48 is a formal provision that gives effect to Schedule 3, which amends the *National Parks and Wildlife Act 1974*.

Clause 49 is a formal provision that gives effect to Schedule 4, which amends the *Native Vegetation Conservation Act 1997*.

Clause 50 is a formal provision that gives effect to Schedule 5 (Amendment of other Acts).

Clause 51 requires the Minister to review the proposed Act at the end of 5 years after its date of assent and to report to Parliament on the outcome of the review.

Schedules

Schedule 1 provides for the members and procedure of the Board.

Schedule 2 enables regulations of a savings or transitional nature to be made in consequence of the enactment of the proposed Act.

Schedule 3 amends the *National Parks and Wildlife Act 1974* in consequence of the Trust's proposed involvement with conservation agreements.

Schedule 4 amends the *Native Vegetation Conservation Act 1997* in consequence of the Trust's proposed involvement with property agreements.

Schedule 5 amends the following Acts:

- (a) the *Forestry Act 1916* is amended so as to make it clear that section 27G of that Act (which authorises the issue of licences authorising the ringbarking or other killing or destruction of trees on Crown-timber lands, as defined in the Act) does not authorise the issue of such a licence in respect of land that is vested in, owned by, held on trust by or leased by the Trust, or land that is the subject of a Trust agreement,
- (b) the *Land and Environment Court Act 1979* is amended so as to confer jurisdiction on the Land and Environment Court to hear and dispose of proceedings for the enforcement of Trust agreements,
- (c) the *Land Tax Management Act 1956* is amended so as to exempt from land tax land that is vested in, owned by, held on trust by or leased by the Trust (and makes a consequential amendment),
- (d) the *Local Government Act 1993* is amended so as to exempt the land referred to in paragraph (c) above from all rates.