HISTORIC HOUSES ACT, 1980, No. 94

New South Wales

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ELIZABETHÆ II REGINÆ

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Act No. 94, 1980.

An Act to provide for the care, control and management of certain houses of historic importance. [Assented to, 1st May, 1980.]

See also Elizabeth Bay House Trust (Repeal) Act, 1980; National Parks and Wildlife (Vaucluse House) Amendment Act, 1980; Liquor (Historic Houses) Amendment Act, 1980.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Historic Houses Act, 1980". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commencement.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :— Arrangement.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—HISTORIC HOUSES TRUST—*ss.* 5–12.

PART III.—ADMINISTRATION—*ss.* 13–15.

PART IV.—FINANCE—*ss.* 16–19.

PART V.—GENERAL—*ss.* 20–23.

SCHEDULE 1.—PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Interpretation.

"Director" means the Director of Historic Houses appointed under section 13 and includes a person acting as Director;

"historic house" means a building vested in the Trust together with its appurtenant grounds;

"Trust" means the Historic Houses Trust of New South Wales constituted by section 5;

"trustee" means trustee appointed under section 6.

(2) Nothing in this Act affects the operation of the Heritage Act, 1977.

PART II.

HISTORIC HOUSES TRUST.

Constitution of Trust.

5. (1) There is hereby constituted a corporation with the corporate name "Historic Houses Trust of New South Wales".

(2) The Trust has, and may exercise and perform, the powers, authorities, duties and functions conferred or imposed on it by or under this or any other Act.

(3) In the exercise and performance of its powers, authorities, duties and functions the Trust is subject to the direction and control of the Minister.

(4) The Trust is, for the purposes of any Act, a statutory body representing the Crown.

Trustees and procedure of Trust.

6. (1) The Trust consists of 7 trustees appointed by the Governor, 5 of the trustees being nominated by the Minister, 1 by the Minister administering the Public Works Act, 1912, and 1 by the Minister administering the Heritage Act, 1977.

(2) Schedule 1 has effect.

7. The principal objects of the Trust are— Principal objects of Trust.

(a) to manage and maintain as house museums the buildings vested in it having regard to their historic and architectural interest and to manage and maintain the grounds appurtenant thereto; and

(b) to provide such educational and cultural services in relation to those buildings as, in the opinion of the Trust, would increase public knowledge and enjoyment of those buildings and their place in the heritage of the State.

8. (1) The Trust may— Powers of Trust.

(a) maintain, or make arrangements for the maintenance of, the property of the Trust and, in pursuance of its objects, acquire (either as property of the Trust or otherwise) any property for temporary or permanent exhibition in a historic house;

(b) lend property for exhibition otherwise than in a historic house or for such other purposes as the Trust thinks fit;

(c) subject to such conditions (whether relating to times or otherwise) as the Trust imposes, permit admission of the public to the whole or any part of a historic house;

(d) promote and provide (whether for reward or otherwise) exhibitions, lectures, films, photographs, transparencies, publications and other educational services and material in pursuance of its principal objects;

(e) subject to such conditions as the Trust imposes, permit the use of any part of a historic house for activities of an educational or cultural nature, for social functions, State occasions or charitable or other promotional activities of a nature approved by the Trust or for the holding of conferences or meetings;

(f) permit the use of a historic house for the taking of photographs, the making of films or sound recordings and the production of television or radio programmes or material;

(g) in, or in connection with, a historic house provide, or permit the provision of, food or other refreshments and apply for, hold or dispose of any licence, permit or other authority in connection therewith;

(h) engage, and enter into contracts with, artists, entertainers, lecturers and performers to appear at a historic house and engage, and enter into contracts with, consultants and photographers, and pay them such fees and remuneration as may be agreed upon;

(i) charge and receive fees or other amounts for, or in connection with, any service provided, article sold or permission given by the Trust in the exercise of its powers; and

(j) enter into any contract or arrangement with any person for the purpose of promoting the objects of the Trust.

(2) Subject to this Act and the regulations made thereunder, the Trust has the control and management of all property vested in it.

(3) The Trust may agree to any condition (not inconsistent with its objects) being imposed on its acquisition of any property.

(4) Where, by gift inter vivos, devise or bequest, the Trust acquires property, it may retain the property in the form in which it is acquired, subject to any condition to which the Trust has agreed under subsection (3) in relation to the property.

(5) The rule of law against remoteness of vesting does not apply to a condition to which the Trust has agreed under subsection (3).

(6) The Stamp Duties Act, 1920, does not apply to or in respect of any gift inter vivos, devise or bequest made or to be made to the Trust.

(7) The Trust has, and may exercise and perform, such powers, authorities, duties and functions in addition to those specified in this section as are not inconsistent with this Act and the regulations and are reasonably necessary for the attainment of its objects, but may borrow money only in accordance with Part IV.

Committees.

9. (1) The Trust may establish such committees as it thinks fit for the purpose of assisting it to exercise and perform its powers, authorities, duties and functions.

(2) A person may be appointed to a committee whether or not he is a trustee.

Restriction on alterations, etc., to historic house.

10. The Trust may, with the consent of the Minister, authorise alterations and other improvements to a historic house subject to compliance with any conditions imposed by the Minister when giving that consent.

Dealings with property.

11. (1) In this section "condition" means a condition to which the Trust has agreed under section 8 (3).

(2) Subject to subsection (3), the Trust shall not sell, mortgage, demise for a term exceeding 6 months or otherwise dispose of, any real property, or any other property acquired by gift inter vivos, devise or bequest except—

(a) where the property was acquired without being subject to a condition—with the approval of the Governor (which may be given in respect of any case or class of cases); or

(b) where the property was acquired subject to a condition—in accordance with the condition or section 12.

(3) Subject to section 8 and except to the extent that it would be in breach of a condition, the Trust shall invest any of its funds not immediately required for the purposes of the Trust in any manner authorised by law for the investment of trust funds.

Disposal of certain property.

12. (1) Subject to subsection (2), where the Trust resolves that any property that has been acquired by it subject to a condition to which it has agreed under section 8 (3) is not required for the purposes of the Trust, the Trust may—

(a) sell the property and retain the proceeds of the sale as property of the Trust;

(b) exchange the property for other property;

(c) give the property to an institution that is an educational institution for the purposes of the Educational Institutions (Stamp Duties Exemption) Act, 1961; or

(d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property otherwise than for valuable consideration,

notwithstanding the condition subject to which the property was acquired.

(2) The Trust may not sell, exchange, give or dispose of property under subsection (1) except with the consent of the Governor and in accordance with any condition imposed by the Governor when giving his consent.

PART III.

ADMINISTRATION.

Officers and employees.

13. For the purposes of this Act—

(a) a Director of Historic Houses; and

(b) such curators and other officers and employees as may be necessary for the administration of this Act,

may be appointed and employed under and subject to the Public Service Act, 1979.

Director.

14. The Director—

(a) is responsible for the administration and management of the property of the Trust and of services provided in conjunction therewith;

(b) is the secretary to the Trust; and

(c) in the exercise and performance of the powers, authorities, duties and functions conferred or imposed on him by or under this Act, is subject to the direction and control of the Trust.

Delegation by Trust.

15. (1) The Trust may, by instrument in writing, delegate to a trustee or to a person appointed or employed pursuant to section 13 or to a committee established under section 9 the exercise or performance of such of its powers (other than this power of delegation) authorities, duties or functions as are specified in the instrument of delegation and may, by a like instrument, revoke wholly or in part any such delegation.

(2) A delegation under this section may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstance, as are specified in the delegation.

(3) A power, authority, duty or function the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the delegation.

(4) Notwithstanding a delegation under this section, the Trust may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(5) An act or thing done or suffered by a delegate under this section in accordance with the delegation has the same force and effect as if it had been done or suffered by the Trust.

PART IV.

FINANCE.

Endowment. **16.** (1) The Treasurer shall, out of money provided by Parliament, pay to the Trust by such instalments as he thinks fit an annual endowment to be applied by the Trust towards—

(a) the purchase of items for exhibition in historic houses and their presentation;

(b) the cost of any alterations to historic houses; and

(c) subject to subsection (2), other expenditure incurred by the Trust.

(2) The endowment payable under subsection (1) may not be applied towards—

(a) the remuneration of persons appointed or employed pursuant to section 13; or

(b) general operating expenses of the Trust, including those relating to the maintenance of historic houses.

17. (1) For the temporary accommodation of the Trust, it may obtain advances by overdraft on current account in any bank or banks to such extent as may be approved by the Governor on the recommendation of the Treasurer. Temporary accommodation.

(2) The Treasurer may lend money to the Trust upon such terms as to repayment and interest as may be agreed upon.

18. (1) The Trust shall cause to be kept proper accounts and records in relation to all of its operations. Accounts.

(2) The Trust shall, as soon as practicable, but within 6 months, after the end of each financial year of the Trust, prepare and submit to the Minister for presentation to Parliament a statement of accounts together with the Auditor-General's certificate given under this section in relation to the statement.

(3) The statement of accounts shall be in a form approved by the Auditor-General, shall include such information as is requested by him and shall exhibit a true and fair view of the financial position and transactions of the Trust.

(4) The Trust shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.

(5) The Auditor-General's certificate shall state that he has audited the accounts of the Trust relating to the relevant financial year, shall indicate whether the statement of accounts complies with subsection (3) and shall set forth any qualifications subject to which the certificate is given.

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by him and before its submission to the Minister.

(7) The Minister shall lay the statement of accounts, or cause it to be laid, together with the Auditor-General's certificate, before both Houses of Parliament as soon as practicable after receipt by him of the statement.

(8) The financial year of the Trust is the year commencing on 1st July.

Audit.

19. (1) The accounts and records of financial transactions of the Trust, and the records relating to assets of the Trust or in the custody of the Trust, shall be inspected and audited by the Auditor-General.

(2) For the purposes of any such inspection and audit, the Auditor-General or a person authorised by him is entitled at all reasonable times to full and free access to the accounts, records, documents and papers of the Trust and may make copies thereof or take extracts therefrom.

(3) The Auditor-General or a person authorised by him may require a person, being a trustee or an officer or employee of the Trust, to furnish him with such information in the possession of the person, or to which the person has access, as the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act and the person shall comply with the requirement.

Penalty : $200.

(4) The Auditor-General may dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

(5) The Auditor-General shall report to the Trust and the Minister on the result of any such inspection and audit and as to such irregularities or other matters as in his judgment call for special notice or are as prescribed.

(6) Towards defraying the costs and expenses of any such inspection and audit, the Trust shall pay to the Consolidated Revenue Fund such amounts, at such times, as the Treasurer decides.

PART V.

GENERAL.

Acquisition of certain real property.

20. (1) In this section and section 21 "public authority" means—

(a) Her Majesty;

(b) a trustee for Her Majesty;

(c) a constructing authority under the Public Works Act, 1912, or under any other Act that provides for the application of any provisions of the Public Works Act, 1912.

(2) Where land is vested in a public authority and the Minister, after consulting the public authority, is satisfied that a building situated on the land is suitable for control and management by the Trust as a historic house, the Governor may, by proclamation that describes the land and is published in the Gazette, declare that the land is divested from the public authority and is vested in the Trust for the estate or interest specified in the proclamation.

(3) Upon the publication of a proclamation referred to in subsection (2)—

(a) any setting apart, dedication or reservation of the land described in the proclamation is revoked; and

(b) the land so described is vested in the Trust for the estate or interest so described freed and discharged from any trusts affecting it immediately before publication of the proclamation but without prejudice to any other estate or interest in the land.

Transfer of assets and liabilities.

21. (1) Where a proclamation is published under section 20 (2) and land is thereby divested from a public authority and vested in the Trust—

(a) all personal property of the public authority that, immediately before the publication, was used by the public authority in connection with the land, and all right and interest therein, and all control and management thereof, are vested in the Trust;

(b) all contracts, agreements, arrangements and undertakings entered into with, and all securities given to or by, the public authority and in force immediately before the publication shall, to the extent that they relate to the land, be deemed to be contracts, agreements, arrangements and undertakings entered into with, and securities given to or by, the Trust;

(c) the Trust may enforce and realise any security or charge existing in favour of the public authority immediately before the publication in so far as the security or charge relates to the land and may exercise and perform any powers, authorities, duties and functions thereby conferred or imposed on the public authority as if the security or charge were a security or charge in favour of the Trust; and

(d) any condition subject to which the public authority acquired any property, right or interest referred to in paragraph (a) by gift inter vivos or bequest shall be deemed to have been agreed to by the Trust under section 8 (3) as a condition upon which the property, right or interest was acquired.

(2) Any dispute between a public authority and the Trust as to the operation of subsection (1) shall be resolved by the Governor.

Annual report.

22. (1) As soon as practicable after 30th June, but on or before 30th September, in each year, the Trust shall prepare and forward to the Minister a report of its work and activities for the 12 months ending on 30th June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

23. (1) 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 and, in particular, for or with respect to— Regulations.

(a) meetings of the Trust;

(b) committees of the Trust;

(c) the use of a historic house or other property of or services provided by the Trust; and

(d) regulating or prohibiting the parking or movement of vehicles upon property of the Trust.

(2) A provision of a regulation may—

(a) apply differently according to such factors as are specified in the regulation; or

(b) authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein.

(3) A provision of a regulation may impose a penalty not exceeding $500 for a breach of the regulation.

SCHEDULE 1. Sec. 6 (2).

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST.

1. A person who is of or above the age of 70 years is not eligible to be appointed as a trustee or a deputy of a trustee. Age limit for trustee.

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST—*continued.*

Deputy for trustee.

2. (1) If, owing to his illness or absence, a trustee is unable to act as a trustee, the Minister may appoint a person to act in the place of the trustee during his illness or absence.

(2) A deputy appointed under this clause has, while he is acting as such a deputy, the powers, authorities, duties and functions of a trustee.

(3) No person shall be concerned to inquire whether any occasion has arisen requiring or authorising a person to act in the place of a trustee or as to the necessity for, or propriety of, any appointment of a deputy for a trustee, and all acts and things done or omitted by a deputy when so acting have the same consequences as they would have if done or omitted by the trustee for whom the deputy is acting.

Term of office and casual vacancies.

3. (1) Unless he earlier vacates his office, a trustee holds office for such period, not exceeding 4 years, as is specified in the instrument of his appointment but, subject to clause 1, he may be appointed for more than one term of office.

(2) On the occurrence of a vacancy in the office of a trustee otherwise than by the expiration of his term of office, the Governor may appoint a person to hold that office for the balance of his predecessor's term of office, being a person nominated in the same manner as that predecessor.

Public Service Act, 1979, does not apply to trustee.

4. The Public Service Act, 1979, does not apply to or in respect of the appointment of a trustee and a trustee is not, in his capacity as a trustee, subject to that Act during his term of office.

Remuneration of trustee, etc.

5. A trustee, a deputy for a trustee and a member of a committee established under Part II who is not a trustee are each entitled to be paid such remuneration (including travelling and sustenance allowances) as the Minister may from time to time determine in respect of each of them.

Removal from office.

6. The Governor may, for any cause that to him seems sufficient, remove a trustee from office.

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST—*continued.*

Vacation of office.

7. A trustee vacates his office if he—

(a) dies;

(b) resigns his office by writing under his hand addressed to the Minister and the Minister accepts the resignation;

(c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or estate for their benefit;

(d) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

(e) except on leave granted by the Trust, is absent from 3 consecutive ordinary meetings of the Trust of which notice has been given to him personally or in the ordinary course of post and is not before the expiration of 6 weeks after the latest of those meetings excused by the Trust for his absence from the meetings;

(f) is removed from office by the Governor; or

(g) attains the age of 70 years.

Chairman.

8. (1) The Chairman of the Trust shall be such trustee as the Minister nominates as Chairman.

(2) A Chairman of the Trust holds office until his successor is nominated by the Minister or until he ceases to be a trustee, whichever first occurs.

(3) For the purposes of subclause (2) of this clause, a trustee does not cease to be a trustee upon the expiration of his term of office if he is re-appointed as a trustee for a term commencing immediately after the expiration of his last preceding term of office.

(4) At a meeting of the Trust—

(a) the Chairman; or

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO TRUSTEES AND PROCEDURE OF THE TRUST—*continued.*

(b) in the absence of the Chairman or if it is a meeting held when the office of Chairman is vacant—a chairman elected by the trustees present at the meeting from among their number,

shall preside.

Procedure, etc.

9. (1) The procedure for convening meetings of the Trust and for the conduct of business at those meetings shall, subject to this Schedule and the regulations, be as determined by the Trust.

(2) The first meeting of the Trust shall be convened by the Minister giving to the trustees such notice as he thinks fit.

(3) Four trustees shall form a quorum and any duly convened meeting of the Trust at which a quorum is present is competent to transact any business of the Trust.

(4) In the event of an equality of votes at a meeting of the Trust, the trustee presiding has a casting vote in addition to a deliberative vote.

(5) A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present is a decision of the Trust.

(6) Proceedings at a meeting of the Trust are not invalidated by the discovery of a defect in the appointment of a trustee.

Director.

10. The Director—

(a) shall cause minutes of each meeting of the Trust to be recorded and preserved;

(b) is entitled to be present at each meeting of the Trust and to be heard on any matter considered by the Trust; and

(c) is a member, ex officio, of each committee of the Trust.