

Mosman Anzac Memorial Hall Act 1938 (Private Act)

[1938-mam]



New South Wales

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Contents

Long title	4
Preamble	4
Part 1 Preliminary	5
1 Name of Act	5
2 Division into parts	5
3 Definitions	5
Part 2 The Trustees	6
4 Appointment of Trustees	6
5 New Trustees	7
Part 3 Powers, authorities, duties and functions of the Trustees	7
6 Vesting of trust property	7
7 Power to mortgage	7
8 Power to sell	8
9 Provision of club-room	8
10 Sale of land and building	8
11 Power of leasing	8
12 Protection of purchasers etc	9
13 Receipt of moneys	9
14 Power to repair etc	9
15 Power to insure	9

16 Application of insurance money	9
17 Power to receive donations etc.....	9
18 Responsibility of Trustees etc	10
19 Power to make by-laws	10
20 Publication of accounts, etc.....	10
Part 4 The trust property and the trusts upon which it is held	10
21 Application of revenue.....	10
22 Application of surplus income.....	11
23 Trusts after failure of primary objects.....	11
Part 5 Miscellaneous	12
24 Receipt of Secretary etc sufficient discharge to Trustee	12
25 Preservation of rights	12
26 Vesting of rights	12
Schedule One.....	12
Schedule Two.....	13
Schedule Three.....	13

Mosman Anzac Memorial Hall Act 1938 (Private Act)



New South Wales

An Act to provide for the appointment of Trustees of the Mosman Anzac Memorial Hall; to vest certain lands, buildings, money, securities and other property in the Trustees upon certain trusts; to define the powers of the Trustees; and for purposes connected therewith.

Preamble

WHEREAS by means of divers public subscriptions and appeals certain sums of money have from time to time been raised for the purpose of erecting and maintaining in the Municipality of Mosman a hall to serve as a memorial to the sailors, soldiers and nurses of Mosman who had fallen in the Great War of 1914–1918 and a club-house for the use of the members of the Mosman Sub-branch of the Returned Sailors and Soldiers' Imperial League of Australia Incorporated; and whereas at a meeting of Members of the said Sub-branch and of subscribers to the fund raised for the purposes aforesaid held on the Ninth day of August One thousand nine hundred and twenty Leslie Wolf Abel, Sidmont Mandelson, Alan Malcolm Smith and John Hare Phipps were elected Trustees; And whereas certain land being the land comprised in Certificates of Title Registered respectively Volume 3362 Folio 8 and Volume 1494 Folio 157 was acquired for the purpose of erecting the hall and club-house aforesaid out of the moneys so raised as aforesaid by public subscriptions and appeals; And whereas a building comprising a hall and club-room was erected upon the said land and was paid for partly out of the moneys so raised as aforesaid by public subscriptions and appeals and partly out of moneys advanced to the Trustees by the Commonwealth Bank of Australia; And whereas Sidmont Mandelson, John Hare Phipps and Leonard Ingram Mitchell being the then Trustees personally guaranteed the repayment to the said Bank of the moneys so advanced And whereas in pursuance of such guarantee the Trustees personally paid to the said Bank certain sums of money in reduction of the money so advanced And whereas the sums of money so personally paid by the Trustees have not been repaid to them or their executors administrators or assigns And whereas certain sums of money have from time to time been advanced by the Mosman Sub-branch of the Returned Sailors and Soldiers' Imperial League of Australia (Incorporated) to the Trustees for the time being which said sums have not been repaid to the said Sub-branch And whereas the said building is known as "The Anzac Memorial Hall" And whereas the Trustees before mentioned other than the said Leonard Ingram Mitchell have died or resigned from office and the sole surviving Trustee is Leonard

Ingram Mitchell who was elected at a public meeting held on the Ninth day of April One thousand nine hundred and twenty-three And whereas the title to the said lands now stands in the names of John Hare Phipps deceased and Leonard Ingram Mitchell subject to Mortgage Registered No. A995853 to The Commonwealth Bank of Australia and to Lease Registered No. C348464 being the Lease next hereafter referred to And whereas portion of the said building is now leased to a Company known as Rex Theatres Limited and used by it as a picture theatre And whereas the remaining portion of the building is used by the Mosman Sub-branch of the Returned Sailors and Soldiers' Imperial League of Australia Incorporated as a Soldiers Club And whereas no deed or other instrument of trust has ever been executed defining the trusts upon which the said land and buildings and the income derived and to be derived therefrom shall be held And whereas it is expedient to provide for the appointment of Trustees of the said lands and buildings and of any other property, moneys or securities held or to be held in connection therewith and to vest such lands, building, property, moneys or securities in such Trustees and to declare the trusts upon which the same shall be held by such Trustees and to define the duties and powers of such Trustees:

Be it therefore enacted by the King'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 1 Preliminary

1 Name of Act

This Act may be cited as the *Mosman Anzac Memorial Hall Act 1938*.

2 Division into parts

This Act is divided into parts, as follows:

PART 1—PRELIMINARY—ss 1-3.

PART 2—THE TRUSTEES—ss 4-5.

PART 3—POWERS, AUTHORITIES, DUTIES AND FUNCTIONS OF THE TRUSTEES—ss 6-20.

PART 4—THE TRUST PROPERTY AND THE TRUSTS UPON WHICH IT IS HELD—ss 21-23.

PART 5—MISCELLANEOUS—ss 24-26.

SCHEDULES ONE, TWO AND THREE.

3 Definitions

In this Act, unless the context or subject matter otherwise indicates or requires:

Dependant

(a) means any person connected by blood marriage or adoption with and who would, in

the opinion of the Trustees be entitled to receive a contribution towards his or her support, care, maintenance, education or advancement from a member of the following classes of persons, if such member were living or otherwise were able so to contribute namely: returned sailor or soldier; sailor, soldier or nurse deceased in consequence (in the opinion of the Trustees) of The Great War 1914–1918, and

- (b) includes the mother of a member born out of wedlock of any of the classes mentioned in subclause (a) hereof and the child born out of wedlock of any member of such classes.

Nurse means any person who was during The Great War 1914–1918 a member of the Army Medical Corps Nursing Service accepted or appointed by the Director-General of Medical Services for service outside Australia and shall be deemed to include a member of the Army Medical Corps Nursing Service of any of the King's Dominions, other than the Commonwealth of Australia accepted or appointed for service outside that Dominion.

Soldier means any person who was during The Great War 1914–1918 a member of the Commonwealth Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed on a ship of war and shall be deemed to include any person who served during the said War in the Naval or Military Forces of any of the King's Dominions, other than the Commonwealth of Australia, on active service outside that Dominion and "Returned Soldier" means a soldier as herein defined whose enlistment has been terminated.

The Sub-branch means the Mosman Sub-branch of The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch).

The Trust property means the property and assets set out in Schedule One to this Act and includes any property, money or assets acquired or to be acquired by the Trustees in pursuance of this Act in addition to or in substitution therefor.

Trustees means the Trustees for the time being of the Mosman Anzac Memorial Hall appointed by or in pursuance of this Act.

Part 2 The Trustees

4 Appointment of Trustees

- (1) There shall be three Trustees for the purposes of this Act.
- (2) One of such Trustees shall be a member of the Sub-branch and each of the remaining Trustees shall be a bona fide resident of the Municipality of Mosman.
- (3) The first three Trustees shall be:—John Ross Wallace of Arbutus-street, Mosman, Retired Publisher, Gordon William Hastie of Middle Head road, Mosman, Licensed Victualler, and Reginald Charles Young of Beaconsfield-road, Mosman, Motor Engineer.

- (4) The Governor may by notification published in the Gazette remove any Trustee appointed under or in pursuance of this Act.

5 New Trustees

- (1) The Governor may by notification published in the Gazette appoint a new Trustee in the place of any Trustee in any of the following cases:
- (a) where a Trustee is dead,
 - (b) where a Trustee remains out of New South Wales for more than two years,
 - (c) where a Trustee desires to be discharged from all or any of the trusts or powers reposed in or conferred on him or resigns his office by letter addressed to the Chief Secretary,
 - (d) where a Trustee refuses or is unfit to act in such trusts or powers or is incapable of acting therein,
 - (e) where a Trustee is removed in pursuance of the power conferred by subsection four of section four of this Act,
 - (f) where a Trustee ceases to hold the qualification in respect of which he was appointed.
- (2) Upon the appointment of a new Trustee the trust property shall by virtue of this Act vest in the new Trustee so appointed jointly with the continuing Trustees.

Part 3 Powers, authorities, duties and functions of the Trustees

6 Vesting of trust property

The trust property is here by transferred to and vested in the Trustees subject nevertheless to the Mortgage more particularly described in Schedule Two to this Act and to the Lease more particularly described in Schedule Three to this Act.

7 Power to mortgage

The Trustees may from time to time raise on mortgage of the trust property or any part thereof all or any moneys which may be required for the purpose of repaying any outstanding liability or for any of the purposes mentioned in section fourteen of this Act and may secure the repayment of any moneys so raised with interest at such rate as they may think fit by mortgage of the trust property or any part thereof with or upon such terms, conditions or provisions in all respects as the Trustees shall think fit and if the Trustees shall raise more moneys by any such mortgage than may be required for the purposes aforesaid they shall hold the surplus of such moneys and any income to arise therefrom upon the same trusts as the trust property is by this Act held by them. For the purposes of this section the Trustees may sign, execute or enter into any deed of

extension or variation of mortgage.

8 Power to sell

The Trustees may at any time they think fit sell or dispose of the said trust property or any part thereof either for cash or on such terms of credit as they may think fit and for the purposes of such sale or disposal may accept mortgages or other securities to secure the payment of the whole or any part of the purchase moneys. Subject to section ten of this Act the proceeds of such sale shall after deducting therefrom all costs, charges, mortgages, encumbrances and commissions in connection with such sale or disposal and after payment thereof of all outstanding debts and liabilities be invested by the Trustees in or upon any investments authorised by the *Trustee Act 1925* or any Act amending the same and such investments and any mortgages or securities accepted by the Trustees to secure payment of purchase money and the income to be derived from such investments, mortgages or securities shall be held by the Trustee upon the same trusts as the trust property is by this Act held by them.

9 Provision of club-room

- (1) The Trustees shall so long as the land and building erected thereon known as the Anzac Memorial Hall being the land more particularly described in Schedule One to this Act remains unsold make available such portion of the said building as they consider necessary for use by the Sub-branch as a club and rest room for the use of returned sailors and soldiers and other persons who are members of or are entitled to be members of The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch).
- (2) Should the membership of the Sub-branch fall below fifty the Trustees may make available such portion of the building as aforesaid but they shall not be bound so to do.

10 Sale of land and building

If the Trustees in the exercise of their powers sell or dispose of the land and building erected thereon known as the Anzac Memorial Hall being the land more particularly described in Schedule One to this Act, they may if they think fit purchase out of the proceeds of such sale or the disposal other land and erect thereon a Club-room for the use of the Sub-branch or may purchase land with a building already erected thereon for the use of the Sub-branch as a Club-room. Should the Trustees exercise the powers hereby conferred any balance of the proceeds of such sale or disposal not so expended by them shall be held by them as in section 8 of this Act provided.

11 Power of leasing

The Trustees may at any time let lease or otherwise demise the trust property or any part thereof for such term of years or upon such tenancy and upon such terms and for such rent as they may think fit.

12 Protection of purchasers etc

No purchaser, mortgagee, lessee or other person or the Registrar-General upon any sale, exchange, mortgage, lease or other dealing purporting to be made under the powers granted by or under this Act shall be concerned to see or enquire into the necessity or propriety thereof or the mode of exercising the same nor be affected by notice that the exercise of the power is unauthorised, irregular or improper nor be concerned to see to the application or disposition of any purchase, mortgage or other money or rent paid by him.

13 Receipt of moneys

The moneys (if any) arising from any sale, exchange, mortgage, lease or other dealing purporting to be made under the powers granted by or under this Act shall be paid to the Trustees and the receipt of the Trustee shall be an effective discharge therefor.

14 Power to repair etc

The Trustees may repair, alter, add to, pull down, rebuild or renew any buildings or structures forming part of the trust property and for such purposes may use any moneys which are or may be in their hands or under their control and may raise on mortgage such sums as may be required for the purposes aforesaid as provided by section 7 of this Act.

15 Power to insure

- (1) The Trustees may insure against loss or damage, whether by fire or otherwise any insurable property forming part of the trust property and against any risk or liability against which it would be prudent for a person to insure if he were acting for himself.
- (2) The insurance may be for any amount, provided that, together with the amount of any insurance already on foot, the total shall not exceed the insurable value or liability.
- (3) The premiums may be paid by the Trustees out of the income derived from the trust property.

16 Application of insurance money

- (1) The Trustees may, out of the moneys receivable in respect of any insurance policy, rebuild, reinstate, replace or repair any property lost or damaged.
- (2) Any moneys receivable in respect of any insurance policy not so expended shall form part of the trust property and be held by the Trustees accordingly.

17 Power to receive donations etc

The Trustees may receive moneys or other assets real or personal by way of collections, gifts or donations and upon the receipt by the Trustees of any such moneys or other assets the same shall form part of the trust property and be held by the Trustees

accordingly.

18 Responsibility of Trustees etc

The Trustees shall be responsible for the care, management, control and maintenance of the trust property and may without limiting the generality hereof sell and dispose of any part of the trust property which in their opinion is unnecessary or deteriorated and if they think fit purchase or otherwise acquire other assets in substitution therefor.

19 Power to make by-laws

- (1) The Trustees may make by-laws not inconsistent with this Act for the general control and management of the trust property and for regulating the conduct of their own proceedings including the times, places, conduct and quorum of their meetings.
- (2) A printed copy of any such by-laws signed by the Trustees and certified by them as being correct shall be received in all Courts of Law or Equity as conclusive evidence of such by-laws and of the same having been duly made under the authority of this Act.

20 Publication of accounts, etc

The Trustees shall at least once in every year publish in a newspaper circulating in the Municipality of Mosman a report of their activities during the preceding twelve months and a profit and loss account and balance sheet and a statement showing the position of the trust property.

Part 4 The trust property and the trusts upon which it is held

21 Application of revenue

- (1) The Trustees shall hold the trust property upon trust to let or lease the same, subject as herein otherwise provided and to apply the net rents profits and income received therefrom in each year (after payment thereout of all rates, taxes, interest and other authorised outgoings and after setting apart such sum as the Trustees in their discretion think fit for the purpose of reducing the principal liability for the time being subsisting under any mortgage, charge or encumbrance over the trust property or generally for the reduction or payment of any liability or for the establishment or augmentation of a sinking fund for the purpose of meeting any such liability or any contingent liabilities) for the benefit of:
 - (a) returned soldiers and nurses in New South Wales and the dependants of returned soldiers and nurses or deceased soldiers and nurses in New South Wales, and
 - (b)
 - (i) persons, not being returned soldiers and nurses, who are members of or are entitled to be members of The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch),

(ii) persons who in the opinion of the Trustees are the dependants of persons to whom subparagraph (i) of this paragraph applies,

(iii) persons who in the opinion of the Trustees would be the dependants of persons to whom subparagraph (i) of this paragraph would apply if such lastmentioned persons were living,

who by reason of war injury, sickness, unemployment or other cause are in the opinion of the Trustees in need and worthy of assistance.

(2) In applying such income as in this section provided the Trustees shall observe the following order of preference:

(a) returned soldiers and nurses who were resident in the Municipality of Mosman at the date of their enlistment or appointment for service and their dependants,

(b) dependants of soldiers and nurses deceased in the opinion of the Trustees in consequence of The Great War 1914–1918 who were at the date of their enlistment or appointment for service resident in the Municipality of Mosman,

(c) returned soldiers and nurses or their dependants who may for the time being be resident in the Municipality of Mosman,

(d) dependants of deceased returned soldiers and nurses who were at the time of their decease resident in the Municipality of Mosman,

(e) other returned soldiers, nurses and dependants resident in New South Wales,

(f) persons to whom paragraph (b) of subsection one of this section applies.

22 Application of surplus income

(1) Whenever the Trustees shall have in their hands any moneys which will not in their opinion be required for any of the purposes provided by section twenty-one of this Act they shall hold such surplus income upon trust to pay the same to the Royal North Shore Hospital so long as the said Hospital continues to be a public hospital supported wholly or in part by public subscription.

(2) Should the said Hospital cease to be a public hospital supported as aforesaid the Trustees shall hold such surplus income aforesaid upon trust to pay or apply the same to such other charitable objects, purposes or institutions and in such amounts at such times and in such manner as the Trustees may see fit.

23 Trusts after failure of primary objects

(1) Whenever the Trustees are of the opinion that the trust property is no longer required for the benefit of soldiers, nurses, dependants and other persons as provided for in subsection one of section twenty-one of this Act they shall hold the trust property

upon trust to sell and convert into money such part thereof as does not consist of money and to apply the proceeds of such sale and conversion and any other moneys which may be in their hands or under their control in or towards the erection or endowment of a wing in the Royal North Shore Hospital to be thenceforth known as the "Mosman Sailors' and Soldiers' Memorial Wing" or otherwise to pay or apply the same to or for the benefit of the said Royal North Shore Hospital.

- (2) Should the said Hospital have ceased at the date of such sale or conversion to be a public hospital supported wholly or in part by public subscription the Trustees shall pay or apply the proceeds of such sale and conversion and any other moneys which may be in their hands or under their control to such other charitable objects purposes or institutions and in such amounts and in such manner as the Trustees think fit.
- (3) Upon the exercise of the power of sale and conversion hereby conferred the Trustees may postpone such sale or conversion for such period as they may deem expedient notwithstanding that such postponement results in the retention of investments of a wasting speculative or reversionary nature.

Part 5 Miscellaneous

24 Receipt of Secretary etc sufficient discharge to Trustee

Whenever any moneys are paid by the Trustees under or by virtue of this Act to any body, corporation or institution the receipt of the Secretary or Treasurer for the time being of such body, corporation or institution shall be a sufficient discharge to the Trustees who shall not be bound to enquire or see to the application thereof.

25 Preservation of rights

Nothing in this Act contained or that may be done under this Act shall be deemed prejudicially to affect or deprive any person of any right whatsoever which he now has arising out of contract or tort or otherwise and any such right which may at the time of the passing of this Act have been enforceable against the then Trustee or Trustees or his or their predecessors may be enforced against the Trustees.

26 Vesting of rights

Any rights, including choses in action, arising out of contract, tort or otherwise in any wise relating to the trust property which were at the time of the passing of this Act vested in the then Trustee or Trustees are hereby vested in the Trustees and may be exercised by them.

Schedule One

- (a) ALL THAT piece of land situated in the Municipality of Mosman Parish of Willoughby County of Cumberland having a frontage to Military Road and being Lot One on Deposited Plan 4022 and being the whole of the land comprised in Certificate of Title Volume 3362 Folio 8 and also ALL THAT

piece of land adjoining the land lastly described and being part of Lot Two on the said Deposited Plan No. 4022 and being the land comprised in Certificate of Title Volume 1494 Folio 157 upon which said pieces of land is erected the building known as Mosman Anzac Memorial Hall.

- (b) ALL the furniture and fittings other than Lessee's furniture and fittings belonging to the Trustees and installed in the said Mosman Anzac Memorial Hall.

Schedule Two

Memorandum of Mortgage dated 14 September 1923 in favour of the Commonwealth Bank of Australia Registered No. A995853.

Schedule Three

Memorandum of Lease dated 12 June 1935 from John Hare Phipps and Leonard Ingram Mitchell in favour of Rex Theatres Limited Registered No. C348464.