

# Nature Conservation Trust Act 2001 No 10

[2001-10]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2004](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act .....	5
2 Commencement .....	5
3 Definitions .....	5
4 Notes .....	6
5 Land excluded from application of Act .....	6
6 Meaning of “conservation priorities” .....	7
7 Meaning of “Revolving Fund Scheme” .....	7
<b>Part 2 Nature Conservation Trust of New South Wales</b> .....	8
<b>Division 1 Constitution, objects and functions of Trust</b> .....	8
8 Constitution of Trust .....	8
9 Status of Trust .....	8
10 Objects of Trust .....	8
11 Functions of Trust .....	8
12 Powers of Trust .....	9
13 Seal of Trust .....	10
14 Acquisition of property by gift, devise or bequest .....	10
15 Dealings with certain property acquired by gift, devise or bequest .....	11
16 Reports of Trust .....	11
<b>Division 2 Management and staff of Trust</b> .....	12

17 Trust Board .....	12
18 Members of Board .....	12
19 Appointment of non-government members of Board .....	13
20 Staff of Trust .....	13
<b>Division 3 Business plan of Trust</b> .....	<b>14</b>
21 Trust to conduct activities in accordance with business plan .....	14
22 Trust to submit draft business plan to Minister .....	14
23 Consideration of plan .....	14
24 Plan to be revised until conservation priorities endorsed .....	15
25 Amendment of plan .....	15
26 Fresh plan to be prepared at certain intervals .....	15
<b>Division 4 Financial matters</b> .....	<b>16</b>
27 Financial year .....	16
28 Trust to establish accounts .....	16
29 Exemption from certain State taxes .....	16
<b>Part 3 Trust agreements</b> .....	<b>17</b>
30 Making of agreement.....	17
31 Meaning of “diligent inquiry” .....	17
32 Effect of agreement.....	18
33 Contents of agreement.....	18
34 Duration of agreement .....	19
35 Variation of agreement .....	19
36 Registration of agreement.....	19
37 Registered agreement to run with land .....	20
38 Enforcement of agreement.....	20
<b>Part 4 Miscellaneous</b> .....	<b>21</b>
39 Register of agreements .....	21
40 Delegation .....	21
41 Recovery of money by Trust .....	21
42 Service of documents generally .....	21
43 Service of documents on native title holders .....	22

44 Winding up .....	22
45 Landholders may seek assistance .....	23
46 Regulations.....	24
47 Savings and transitional provisions .....	24
48-50 (Repealed) .....	24
51 Review of Act.....	24
<b>Schedule 1 Members and procedure of the Board .....</b>	<b>24</b>
<b>Schedule 2 Savings and transitional provisions .....</b>	<b>30</b>
<b>Schedules 3-5 (Repealed) .....</b>	<b>30</b>

# Nature Conservation Trust Act 2001 No 10



New South Wales

An Act to provide for the establishment, management and functions of the Nature Conservation Trust of New South Wales; to make consequential amendments to other Acts; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Nature Conservation Trust Act 2001*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

In this Act:

**Aboriginal person** means a person who:

- (a) is a member of the Aboriginal race of Australia, and
  - (b) identifies as an Aboriginal person, and
  - (c) is accepted by the Aboriginal community as an Aboriginal person,
- and the expression **Aboriginal people** has a corresponding meaning.

**Board** means the Board of the Trust established by this Act.

**Commonwealth Native Title Act** means the *Native Title Act 1993* of the Commonwealth.

**conservation agreement** has the same meaning as it has in the *National Parks and Wildlife Act 1974*.

**conservation priorities**—see section 6.

**cultural heritage**, in relation to land, means places, objects and features of cultural

value in the landscape, including (but not limited to) places, objects and features of significance to Aboriginal people.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**landholder**, in relation to particular land, means a person (other than the Crown or a statutory body representing the Crown):

- (a) who owns the land, or
- (b) who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of the land.

**native title holder** has the same meaning as it has in the Commonwealth Native Title Act.

**natural heritage** includes (but is not limited to) the following:

- (a) ecosystems and ecosystem processes,
- (b) biological diversity (within the meaning of the [Threatened Species Conservation Act 1995](#)),
- (c) landforms of significance (for example, caves of scientific significance), including geological features and processes.

**property agreement** has the same meaning as it has in the [Native Vegetation Conservation Act 1997](#).

**registered native title body corporate** has the same meaning as it has in the Commonwealth Native Title Act.

**registered native title claimant** has the same meaning as it has in the Commonwealth Native Title Act.

**Revolving Fund Scheme**—see section 7.

**Trust** means the Nature Conservation Trust of New South Wales established by this Act.

**Trust agreement** means an agreement under Part 3.

#### 4 Notes

Notes included in this Act do not form part of this Act.

#### 5 Land excluded from application of Act

This Act does not apply to or in respect of the following land:

- (a) land that is a State forest, national forest, flora reserve or timber reserve under the [Forestry Act 1916](#),
- (b) land vested in, or owned, controlled or managed by, the Forestry Commission constituted under that Act.

## 6 Meaning of “conservation priorities”

- (1) For the purposes of this Act, **conservation priorities** 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 any one or more of the following:
  - (a) the making of a conservation agreement, property agreement or Trust agreement in respect of the land,
  - (b) the acquisition and disposal of the land under the Revolving Fund Scheme,
  - (c) the provision by the Trust of any assistance to the landholder in relation to the land.
- (2) Any conservation priorities of the Trust must be consistent with:
  - (a) this Act (in relation to Trust agreements), and
  - (b) the [National Parks and Wildlife Act 1974](#) (in relation to conservation agreements), and
  - (c) the [Native Vegetation Conservation Act 1997](#) (in relation to property agreements).

## 7 Meaning of “Revolving Fund Scheme”

For the purposes of this Act, the **Revolving Fund Scheme** is the scheme under which the Trust:

- (a) buys or otherwise acquires land that is significant for the conservation of natural heritage (and any cultural heritage associated with natural heritage), and
- (b) arranges for a covenant (which may, but need not, take the form of a conservation agreement or a property agreement) to be registered on the title to the land to protect that heritage, and
- (c) sells or leases the land subject to that covenant, and
- (d) uses 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.

## **Part 2 Nature Conservation Trust of New South Wales**

### **Division 1 Constitution, objects and functions of Trust**

#### **8 Constitution of Trust**

There is constituted by this Act a body corporate with the corporate name of the Nature Conservation Trust of New South Wales.

#### **9 Status of Trust**

- (1) The Trust is not, and does not represent, the Crown.
- (2) Without limiting subsection (1), the Trust:
  - (a) is not an instrumentality or agency of the State, and
  - (b) is not entitled to any immunity or privilege of the State, and
  - (c) cannot render the State liable for any debts, liabilities or obligations of the Trust, and
  - (d) is not a public authority for any purpose and is taken not to have been constituted or established for a public purpose or for a purpose of the State.

#### **10 Objects of Trust**

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.

#### **11 Functions of Trust**

- (1) The Trust has the functions conferred or imposed on it by this or any other Act or law.
- (2) In particular, the Trust has the following functions:
  - (a) to operate the Revolving Fund Scheme,
  - (b) to establish and maintain such other funds as are appropriate to its activities,



- (c) to negotiate, enter into, monitor and enforce compliance with Trust agreements,
  - (d) to negotiate and monitor compliance with conservation agreements and property agreements (and, where the Trust considers it appropriate, to be a party to any such agreement),
  - (e) to enforce compliance with conservation agreements and property agreements to which the Trust is a party,
  - (f) 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 is a party to the relevant agreement and considers it appropriate,
  - (g) to arrange for the development and review of:
    - (i) management strategies in respect of land the subject of any property agreement negotiated by the Trust, and
    - (ii) plans of management (as referred to in section 69C (3) (e) of the *National Parks and Wildlife Act 1974*) in respect of land the subject of any conservation agreement negotiated by the Trust,
  - (h) 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,
  - (i) to be the repository of gifts and bequests of land or money to be used for the conservation of land that is significant for the conservation of natural heritage (and any cultural heritage associated with natural heritage),
  - (j) to raise money from organisations and the general public to help fund its activities,
  - (k) to provide education to the public on issues of conservation, land management and ecological sustainability.
- (3) In exercising its function of negotiating and monitoring compliance with conservation agreements and property agreements, the Trust must act in accordance with the Act under which the agreement is, or is to be, made (that is, the *National Parks and Wildlife Act 1974* in the case of conservation agreements and the *Native Vegetation Conservation Act 1997* in the case of property agreements).

## 12 Powers of Trust

- (1) The Trust has power to do all things necessary or convenient to be done for or in

connection with the exercise of its functions.

- (2) Without limiting subsection (1), the Trust has 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 borrow money, either with or without security,
  - (d) to act as trustee of money or other property vested in the Trust,
  - (e) 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,
  - (f) 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](#),
  - (g) to make and enter into contracts or other arrangements for the carrying out of works, the performance of services or the supply of goods or materials,
  - (h) to appoint agents.
- (3) The Trust may do all things that are supplemental or incidental to, or consequential on, the exercise of its functions.

### **13 Seal of Trust**

The seal of the Trust is to be kept by the Chairperson of the Board and is to be affixed to a document only:

- (a) in the presence of at least 2 members of the Board, and
- (b) with an attestation by the signatures of those members of the fact of the affixing of the seal.

### **14 Acquisition of property by gift, devise or bequest**

- (1) The Trust may acquire any property by gift, devise or bequest (whether on trust or otherwise) for the purposes of this Act and may agree to, and carry out, the conditions of any such gift, devise or bequest, but only if the carrying out of any such condition is not inconsistent with the functions of the Trust.
- (2) The rule of law against remoteness of vesting does not apply to any condition of a gift, devise or bequest to which the Trust has agreed under this section.
- (3) The [Duties Act 1997](#) does not apply to or in respect of any gift, devise or bequest

made or to be made to the Trust.

### **15 Dealings with certain property acquired by gift, devise or bequest**

- (1) If the Trust has, by gift, devise or bequest, acquired property subject to a condition to which the Trust has agreed under section 14, the Trust must not sell, lease, exchange or otherwise dispose of or deal with that property otherwise than in accordance with the condition.
- (2) Despite subsection (1), if the Trust decides that any property that has been acquired by the Trust subject to a condition to which the Trust has agreed 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, or
  - (b) exchange the property for other property, or
  - (c) if the Trust is of the opinion that the property is of no commercial value, dispose of the property without valuable consideration,in contravention of the condition.
- (3) Further, if, after acquiring real property subject to a condition to which the Trust has agreed, the Trust is of the opinion that compliance with the condition would result in:
  - (a) inefficient management of the property, or
  - (b) management detrimental to the conservation of the natural heritage (or any cultural heritage associated with the natural heritage) of the property,the Trust may manage the property in contravention of the condition.

### **16 Reports of Trust**

- (1) As soon as practicable after 30 June in each year, the Trust is to prepare and deliver to the Minister a report of the proceedings of the Trust during the 12 months immediately preceding that date.
- (2) The report must include copies of the financial statements and accounts of the Trust for the 12 month period to which the report relates and an auditor's report on those statements and accounts prepared by an auditor approved by the Minister.
- (3) The Minister is to table the report (or cause it to be tabled) in both Houses of Parliament as soon as practicable after the report is delivered to the Minister.
- (4) The first report under this section is to report on the proceedings of the Trust from the date of its constitution to the 30 June immediately following that date.

## **Division 2 Management and staff of Trust**

### **17 Trust Board**

- (1) There is to be a Board of the Trust.
- (2) The affairs of the Trust are to be managed by the Board.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is taken to have been done by the Trust.
- (4) Schedule 1 has effect with respect to the Board.

### **18 Members of Board**

- (1) The Board is to consist of 10 part-time members (at least one of whom must be an Aboriginal person) appointed by the Minister, of whom:
  - (a) one is to be an officer of the National Parks and Wildlife Service, and
  - (b) one is to be an officer of the Department of Land and Water Conservation, and
  - (c) 8 are to be members of the public (any one or more of whom may be a representative of any non-government agency).
- (2) The Minister is not to appoint a person referred to in subsection (1) (c) to the Board unless the Minister is satisfied that the person has the capacity to do one or more of the following:
  - (a) to increase public knowledge, understanding and appreciation of the importance of conservation of natural heritage by landholders and other community members,
  - (b) to increase public knowledge, understanding and appreciation of the importance of conservation and appropriate management of cultural heritage by landholders and other community members,
  - (c) to manage private land, including agricultural land,
  - (d) to encourage landholders to enter into conservation agreements, property agreements and Trust agreements and to take innovative approaches to conservation on private land,
  - (e) to provide advice to the Board on matters of local land use planning, local land use management and the operations of local councils,
  - (f) to attract and maintain financial support for the Trust,
  - (g) to ensure effective financial management of the Trust,
  - (h) to ensure sound and effective decision-making leading to the attainment of

identified conservation goals,

(i) to provide effective leadership and direction to the Board.

(3) The Minister is to ensure, as far as is possible, that the composition of the Board is such that the Board as a whole has all the capacities specified in subsection (2).

### **19 Appointment of non-government members of Board**

(1) This section applies in respect of the appointment of the members of the Board referred to in section 18 (1) (c).

(2) The Minister is to cause an advertisement inviting written nominations of persons for appointment to the Board to be published in a newspaper circulating throughout New South Wales.

(3) The advertisement must specify the following:

(a) the number of members to be appointed to the Board pursuant to nomination,

(b) the particular capacity or capacities (being a capacity specified in section 18 (2)) that an appointee will be required to have,

(c) the closing date for nominations (being a date not earlier than 28 days after the date of the advertisement),

(d) the address to which nominations are to be sent.

(4) The advertisement must also state that a nomination will not be accepted unless the nominee's written consent to the nomination is forwarded with the nomination.

(5) The Minister must not appoint a person as a member of the Board unless:

(a) the person was duly nominated under this section, and

(b) nominations have closed, and

(c) the Minister has considered all nominations duly received.

### **20 Staff of Trust**

(1) The Trust may employ a Chief Executive Officer and such other staff as may be necessary to enable the Trust to exercise its functions.

(2) The Trust may fix the salary, wages and other conditions of its staff in so far as they are not fixed by or under any other Act or law.

(3) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the staff of the Trust.

- (4) The Trust may engage consultants for the purpose of getting expert advice.

### **Division 3 Business plan of Trust**

#### **21 Trust to conduct activities in accordance with business plan**

The Trust must conduct its activities, as far as is practicable, in accordance with a business plan prepared in accordance with this Act.

#### **22 Trust to submit draft business plan to Minister**

- (1) The Trust must, no later than 6 months after the commencement of this section, prepare and deliver to the Minister a draft business plan specifying the following:
- (a) the conservation priorities of the Trust,
  - (b) the strategy that the Trust proposes to adopt for the immediately following 5 years to further its objects,
  - (c) the criteria for identifying land appropriate for acquisition by the Trust,
  - (d) the criteria that the Trust will meet when entering into Trust agreements,
  - (e) the performance indicators by which the Trust's achievement of its objects is to be measured,
  - (f) the remuneration (if any) to be paid to the members of the Board.
- (2) The conservation priorities of the Trust must be consistent with:
- (a) any regulations made under section 46 (2) (a), and
  - (b) subject to the regulations, any guidelines issued:
    - (i) in relation to conservation agreements—by the Director-General of National Parks and Wildlife, and
    - (ii) in relation to property agreements—by the Director-General of the Department of Land and Water Conservation.

#### **23 Consideration of plan**

- (1) The Minister is, in consultation with the Minister for Land and Water Conservation, to determine whether the conservation priorities of the Trust specified in the draft business plan delivered to the Minister under section 22 are consistent with:
- (a) any regulations made under section 46 (2) (a), and
  - (b) subject to the regulations, any relevant guidelines (as referred to in section 22 (2) (b)).

- (2) The Minister may (having regard to the views of the Minister for Land and Water Conservation) either endorse or refuse to endorse the conservation priorities specified in the draft plan.
- (3) If the Minister refuses to endorse the conservation priorities specified in the draft plan, the Minister is to return the draft plan to the Trust with written reasons for the refusal.
- (4) If the Minister does not return the draft plan in accordance with subsection (3) within 28 days after it is delivered, the Minister is taken to have endorsed the conservation priorities specified in it.

#### **24 Plan to be revised until conservation priorities endorsed**

- (1) If the Minister refuses to endorse the conservation priorities specified in the draft business plan, the Trust is to revise the plan and resubmit it to the Minister.
- (2) Section 23 and this section apply to a resubmitted draft plan in the same way as they apply to an original draft plan.

#### **25 Amendment of plan**

The Trust may amend any endorsed conservation priority specified in its business plan only if the Minister, in consultation with the Minister for Land and Water Conservation, approves the amendment.

#### **26 Fresh plan to be prepared at certain intervals**

- (1) At least 6 months before the expiry of the 5 years to which a business plan of the Trust relates, the Trust must prepare a new draft business plan.
- (2) Nothing in this section prevents the Trust from preparing new draft business plans at more frequent intervals than those required by subsection (1).
- (3) This Division applies in respect of a new draft business plan in the same way as it applies in respect of the Trust's first draft business plan, and so applies as if the period specified in section 22 (1) were the period specified in this section.
- (4) If the Minister does not endorse the conservation priorities specified in a new draft business plan before the expiry of the 5 years to which the business plan under which the Trust is conducting its activities relates, the Trust is to continue to conduct its activities in accordance with the conservation priorities specified in that plan (as far as is practicable) until the conservation priorities specified in the new plan are endorsed.

## **Division 4 Financial matters**

### **27 Financial year**

The financial year of the Trust is the year commencing on 1 July.

### **28 Trust to establish accounts**

- (1) The Trust is to establish, with one or more authorised deposit-taking institutions, such accounts (the **Trust Accounts**) as it thinks appropriate for the money received and expended by the Trust.
- (2) There is to be paid into the Trust Accounts:
  - (a) all money received by or on account of the Trust, and
  - (b) all interest received in respect of the investment of money belonging to the Trust, and
  - (c) all money borrowed by or advanced to the Trust, and
  - (d) all money directed to be paid into the Trust Accounts by or under this or any other Act.
- (3) The money in the Trust Accounts may, subject to the terms of any trust or condition affecting that money or any part of it, be applied for any one or more of the following purposes:
  - (a) providing the remuneration of the members of the Board and the Chief Executive Officer and other staff of the Trust,
  - (b) discharging the liabilities incurred by the Trust in the exercise of its functions,
  - (c) any other purpose authorised by or under this or any other Act.

### **29 Exemption from certain State taxes**

The *Duties Act 1997* does not apply to or in respect of:

- (a) the acquisition of land by the Trust for the purposes of this Act, or
- (b) the leasing of land (whether as lessor or lessee) by the Trust for the purposes of this Act, or
- (c) the disposal of land by the Trust under this Act.

**Note—**

This Act amends the *Land Tax Management Act 1956* and the *Local Government Act 1993* so as to exempt land vested in, owned by, held on trust by or leased by the Trust from liability for land tax and for local government rates.



## Part 3 Trust agreements

### 30 Making of agreement

- (1) The Trust may enter into a Trust agreement with any landholder for the purpose of managing 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.
- (2) A Trust agreement may relate to more than one parcel of land and more than one landholder may be a party to the agreement.
- (3) However, the Trust must not enter into a Trust agreement in relation to any land unless:
  - (a) each landholder of the land, and
  - (b) if the land is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant, and
  - (c) if the land is the subject of a Crown lease—the lessor,has consented in writing to the agreement.
- (4) A Trust agreement entered into in contravention of this section is of no effect.
- (5) Despite subsection (3), if a landholder whose consent to a Trust agreement is required under that subsection cannot, after diligent inquiry (within the meaning of section 31), be found or identified, the agreement may be entered into without the consent of that landholder.

### 31 Meaning of “diligent inquiry”

- (1) For the purposes of section 30, a **diligent inquiry** to identify a person is the taking of the following actions:
  - (a) the searching of the following registers:
    - (i) the Register kept under the *Real Property Act 1900*,
    - (ii) the General Register of Deeds kept under the *Conveyancing Act 1919*,
    - (iii) each Register kept under the Commonwealth Native Title Act,
  - (b) placing, on a board or other structure in a conspicuous place on the land concerned, a notice:
    - (i) stating that it is intended that an agreement between the Trust and the landholder specified in the notice be entered into in respect of the land, and
    - (ii) summarising the substance of the proposed agreement, and

- (iii) inviting all other landholders of the land to contact the Trust at a specified address,
  - (c) publishing a notice referred to in paragraph (b) in a newspaper circulating in the vicinity of the land concerned and in a newspaper circulating generally in New South Wales.
- (2) For the purposes of section 30, a person who is a native title holder is taken to have been unable, after diligent inquiry, to be found or identified if:
- (a) notice of the proposed Trust agreement is served by the Trust in accordance with section 43, and
  - (b) at the expiration of the period of 4 months commencing on service of the notice, the person is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

### **32 Effect of agreement**

- (1) A Trust agreement is binding on the parties to the agreement.
- (2) A Trust agreement does not operate to extinguish any native title rights and interests (within the meaning of the Commonwealth Native Title Act) existing in relation to the land the subject of the agreement immediately before the agreement was entered into.

### **33 Contents of agreement**

- (1) A Trust agreement may include provisions 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.
- (2) A Trust agreement must be consistent with the Trust's conservation priorities (as specified in the business plan referred to in Division 3 of Part 2) and with the regulations.

#### **34 Duration of agreement**

- (1) A Trust agreement:
- (a) takes effect from the date specified in the agreement, and
  - (b) remains in force for such period as is also specified in the agreement.
- (2) Despite subsection (1) (b), a Trust agreement may be terminated by subsequent agreement of the parties to the agreement.

#### **35 Variation of agreement**

A Trust agreement may be varied by a subsequent agreement between the parties to the agreement.

#### **36 Registration of agreement**

- (1) The parties to a Trust agreement may consent to the registration of the agreement in accordance with this section.
- (2) On being notified by the Trust that a Trust agreement has been entered into and the parties have consented to the registration of the agreement, the Registrar-General is required:
- (a) to register the agreement in the General Register of Deeds, and
  - (b) if appropriate, to make an entry:
    - (i) in the Register kept under the [Real Property Act 1900](#), or
    - (ii) in any official record relating to Crown lands that relates to the land to which the agreement applies.
- (3) A Trust agreement relating to land under the [Real Property Act 1900](#) about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.

- (4) A reference in this section to a Trust agreement includes a reference to any variation or termination of the agreement.

### **37 Registered agreement to run with land**

- (1) A Trust agreement that has been registered by the Registrar-General and that is in force is binding on, and enforceable by and against, the successors in title to the landholder who entered into the agreement as if the successor in title were a party to the original agreement.
- (2) A successor in title to a landholder who is party to a registered Trust agreement:
- (a) is taken to have notice of the agreement, and
  - (b) is taken to be a party to the agreement for the purpose of effecting a variation or termination of the agreement in accordance with this Act.

- (3) In this section:

**successor in title** includes a mortgagee, chargee, covenant chargee or other person in possession of land to which a Trust agreement relates pursuant to a mortgage, charge, positive covenant or other encumbrance entered into before the registration of the Trust agreement.

### **38 Enforcement of agreement**

- (1) Proceedings relating to the enforcement of Trust agreements are to be taken in the Land and Environment Court.
- (2) Damages are not to be awarded against a landholder who is a party to a Trust agreement for a breach of the agreement unless the breach arose from an intentional or reckless act or omission by the landholder or by a previous landholder in respect of the land (being an act or omission of which the landholder had notice).
- (3) In assessing damages for breach of a Trust agreement by a landholder, the Court may have regard to:
- (a) any detriment to the public interest arising from the breach, and
  - (b) any financial or other benefit that the landholder sought to gain by committing the breach, and
  - (c) any other matter that it considers relevant.
- (4) Except as provided by subsection (2), nothing in this section limits the remedies of a party under a Trust agreement.

## **Part 4 Miscellaneous**

### **39 Register of agreements**

- (1) The Trust must keep a written register of:
  - (a) all Trust agreements, and
  - (b) all conservation agreements and property agreements to which the Trust is a party.
- (2) The register is to be open for public inspection at the office of the Trust during ordinary office hours.
- (3) The Trust may charge a fee, determined by the Trust on a cost-recovery basis, for any such inspection of the register.
- (4) The Trust is to make copies of, or extracts from, the register available on request on payment of a reasonable copying fee.
- (5) Nothing in this section prevents the keeping of the register in an electronic or other form so long as the contents of the register are made available in writing on request (whether of a member of the public under subsection (2) or otherwise).

### **40 Delegation**

The Trust may delegate any of the functions of the Trust (other than this power of delegation) to the Chief Executive Officer or any other member of the staff of the Trust.

### **41 Recovery of money by Trust**

Any fee or other money due to the Trust may be recovered by the Trust as a debt in a court of competent jurisdiction.

### **42 Service of documents generally**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
  - (a) in the case of a natural person:
    - (i) delivering it to the person personally, or
    - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

- (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
- (ii) sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

#### **43 Service of documents on native title holders**

- (1) If a document is authorised or required by this Act or the regulations to be served on a person who is a native title holder in relation to land, service of the document is taken to be effected in accordance with section 42 if the document is served on a registered native title body corporate in relation to the land concerned.
- (2) If no approved determination of native title (within the meaning of the Commonwealth Native Title Act) exists in relation to the land concerned, a document authorised or required under this Act to be served on a person who is a native title holder who cannot be identified may be served on any such person by serving it, in a manner authorised by section 42 on:
  - (a) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the land concerned, and
  - (b) any registered native title claimants in relation to the land concerned (or in relation to an area that includes that land).

#### **44 Winding up**

- (1) The Trust may be wound up voluntarily or by the Supreme Court.
- (2) Subject to subsection (1), the winding up or dissolution of the Trust is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
  - (a) the provisions apply to the Trust as if it were a company,
  - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

**Note—**

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (2), but only if:
- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
  - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3A) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (3) as if subsection (2) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.
- (4) Despite the provisions of the *Corporations Act 2001* of the Commonwealth (as applied under this section) and any other law, if there is outstanding property of the Trust after the Trust 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.

#### **45 Landholders may seek assistance**

Nothing in this Act prevents:

- (a) a landholder who is a party to a conservation agreement, or a property agreement, to which the Trust is not a party from seeking financial or other assistance from the Trust, or
- (b) a landholder who is a party to a Trust agreement, or to a conservation agreement or a property agreement to which the Trust is a party, from seeking financial or other assistance from any Government source,

in meeting his or her obligations under the agreement concerned.

## 46 Regulations

- (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.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
  - (a) conservation priorities,
  - (b) any remuneration to be paid to Board members,
  - (c) the winding up of the Trust.

## 47 Savings and transitional provisions

Schedule 2 has effect.

## 48-50 (Repealed)

## 51 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Members and procedure of the Board

(Section 17)

### Part 1 General

#### 1 Definitions

In this Schedule:

**Chairperson** means the Chairperson of the Board.

**Deputy Chairperson** means the Deputy Chairperson of the Board.

**member** means any member of the Board.



## **Part 2 Members**

### **2 Terms of office of members**

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) However, 5 of the first appointees are to be appointed for a term that does not exceed 2 years and 6 months.

### **3 Remuneration**

- (1) An eligible member is entitled to be paid such remuneration (including travelling and subsistence allowances) as:
  - (a) the Board may from time to time determine in its business plan in respect of the member, or
  - (b) the regulations may specify,whichever is the lesser.
- (2) The remuneration is payable from the Trust Accounts.
- (3) An eligible member is a member referred to in section 18 (1) (c).

### **4 Deputies**

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.

### **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or

- (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) in the case of a member referred to in section 18 (1) (a) or (b)—ceases to be qualified for appointment.
- (2) The Minister may at any time remove a member from office, but only if the Minister is satisfied that the member is guilty of misconduct in his or her activities as a member.
- (3) For the purposes of this clause, misconduct of a member includes (but is not limited to) the following:
- (a) conduct that is detrimental to the achievement of the objects of the Trust,
  - (b) conduct that is likely to bring the Trust into disrepute,
  - (c) unethical conduct.

## **6 Filling of vacancy in office of member**

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **7 Chairperson and Deputy Chairperson**

- (1) A Chairperson and Deputy Chairperson are to be elected by the members at the first meeting of the Board.
- (2) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.

- (3) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.
- (4) The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:
  - (a) ceases to be a member of the Board, or
  - (b) resigns from that office by instrument in writing addressed to the Board, or
  - (c) is removed from office by a vote of the Board.
- (5) If the office of Chairperson or Deputy Chairperson becomes vacant, a member is to be elected by the members to fill the vacancy.

## **8 Disclosure of pecuniary interests**

- (1) If:
  - (a) a 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,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of such reasonable fee as may be determined by the Board from time to time.
- (4) After a member has disclosed the nature of an interest in any matter, the other members are to determine whether the member concerned may:
  - (a) be present during any deliberation of the Board with respect to the matter, or

(b) take part in any decision of the Board with respect to the matter.

(5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of the Board for the purpose of making the determination, or

(b) take part in the making by the Board of the determination.

(6) A contravention of this clause does not invalidate any decision of the Board.

## **9 Effect of certain other Acts**

(1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **10 Personal liability**

A matter or thing done or omitted to be done by the Board, a member of the Board or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

## **Part 3 Procedure**

### **11 General procedure**

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

### **12 Quorum**

The quorum for a meeting of the Board is 7 members, of whom one must be the Chairperson or Deputy Chairperson.

### **13 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Board.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **14 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.

### **15 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **16 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

## **Schedule 2 Savings and transitional provisions**

(Section 47)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

    this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Schedules 3-5 (Repealed)**