

Historic Houses Act 1980 No 94

[1980-94]



New South Wales

Status Information

Currency of version

Historical version for 6 July 2009 to 14 October 2010 (accessed 29 November 2024 at 16:40)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **Does not include amendments by**
Historic Houses Amendment (Throsby Park Historic Site) Act 2010 No 5 (not commenced)

Authorisation

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File last modified 22 March 2010

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Historic Houses Act 1980 No 94



New South Wales

An Act to provide for the care, control and management of certain houses, and other buildings and places, of historic importance.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Historic Houses Act 1980*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (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3 (Repealed)

4 Definitions and application of Act

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

Director means the Director of Historic Houses holding office as such under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

historic building or place means a building, structure or site (and any of its appurtenant grounds or works):

- (a) acquired by the Trust under this Act, except for any building or land acquired under section 8 (1A) (a), or
- (b) vested in the Trust under section 20 or by or under the provisions of any other Act.

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*.
- (3) Nothing in this Act applies to land reserved under the *National Parks and Wildlife Act 1974*.
- (4) Notes included in this Act do not form part of this Act.

Part 2 Historic Houses Trust

5 Constitution of Trust

- (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.

6 Trustees and procedure of Trust

- (1) The Trust is to consist of 9 trustees appointed by the Governor on the nomination of the Minister. At least one trustee is to have knowledge or experience in history, and at least one trustee is to have knowledge or experience in architecture.
- (2) Schedule 1 has effect.

7 Principal objects of Trust

The principal objects of the Trust are as follows:

- (a) to control, manage, maintain and conserve historic buildings or places, having regard to the historic, social and architectural interest and significance of those buildings and places,
- (b) to collect, manage, maintain and conserve objects and materials associated with, and of significance to, those buildings and places,
- (c) to research and interpret the significance of those buildings, places, objects and materials, having regard to their historic, social and architectural interest and value,
- (d) to provide educational, cultural and professional services (including by way of research, publications, information, public programs and activities) in respect of those buildings, places, objects and materials that, in the opinion of the Trust, will:
 - (i) increase public knowledge and enjoyment of, and access to, those buildings, places, objects and materials, and

- (ii) promote their place in the heritage of the State.

7A Acquisition of historic buildings or places

- (1) The Minister may, if satisfied that a building, structure or site is suitable for control and management by the Trust, authorise in writing the acquisition (either as property of the Trust or otherwise) by the Trust of the building, structure or site along with any of its appurtenant grounds or works.
- (2) The Trust may, in accordance with the Minister's authorisation, purchase, lease or otherwise acquire the building, structure or site and any such grounds or works.

7B (Repealed)

8 Powers of Trust

- (1) The Trust may:
 - (a) maintain, or make arrangements for the maintenance of, historic buildings or places and other 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, for restoration or maintenance or for any other purpose approved by the Minister,
 - (b) lend property for exhibition 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 building or place,
 - (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 building or place 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 building or place 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 building or place 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 building or place 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.

(1A) In accordance with any general or special limitations imposed by the Minister, the Trust may:

- (a) acquire (either as property of the Trust or otherwise) buildings and land for the purpose of providing office accommodation for the Trust and any of its officers or employees or residential accommodation for the caretaker of any historic building or place or for any other purpose reasonably necessary or incidental to the exercise or performance by the Trust of its powers, authorities, duties and functions,
- (b) carry out works, or make arrangements for the carrying out of works, for the restoration of a historic building or place,
- (c) undertake such investigation as may be necessary to ascertain the extent to which a building, structure or site may be suitable for control and management by the Trust.
- (d) (Repealed)

- (2) Subject to this Act and the regulations made thereunder, the Trust has the control and management of its property.
- (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 *Duties Act 1997* 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.

(8) However, the Trust cannot employ any staff.

Note—

Staff may be employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Trust to exercise its functions.

9 Committees

- (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 the person is a trustee.

10 Alterations to historic buildings or places

- (1) The Trust may carry out or authorise the carrying out of alterations and improvements to a historic building or place.
- (2) Such alterations and improvements may be carried out or authorised to be carried out only in accordance with a conservation plan (as in force from time to time) applying to the historic building or place.
- (3) The Trust may prepare a conservation plan applying to any one or more historic buildings or places.
- (4) A conservation plan has no effect unless it is approved by the Minister.

11 Dealings with property

- (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 (being real 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
 - (a1) where the property (not being real property) was acquired without being subject to a condition—with the approval of the Minister (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 (4), 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.

12 Disposal of certain property

- (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 or her consent.

Part 3 Administration

13 (Repealed)

14 Director

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 the Director by or under this Act, is subject to the direction and control of the Trust.

15 Delegation by Trust

- (1) The Trust may, by instrument in writing, delegate to a trustee or to an authorised person 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.
- (6) In this section, **authorised person** means the Director or any other person employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Trust to exercise its functions.

Part 4

16-19 (Repealed)

Part 5 General

20 Acquisition of certain real property

- (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 the land (including any building, structure or works on the land) is suitable for control and management by the Trust as a historic building or place, 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.

21 Transfer of assets and liabilities

- (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.

22 (Repealed)

23 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 and, in particular, for or with respect to:
 - (a) meetings of the Trust,
 - (b) committees of the Trust,

- (c) the use of a historic building or place 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 5 penalty units for a breach of the regulation.
- (4) Proceedings for an offence against the regulations are to be dealt with summarily before the Local Court.

24 Savings, transitional and other provisions

Schedule 2 has effect.

Schedule 1 Provisions relating to trustees and procedure of the Trust

(Section 6 (2))

1 (Repealed)

2 Deputy for trustee

- (1) If, owing to his or her 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 or her illness or absence.
- (2) A deputy appointed under this clause has, while 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.

3 Term of office and casual vacancies

- (1) Unless the trustee earlier vacates his or her office, a trustee holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment but the trustee 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 or her term of office, the Governor may appoint a person to hold that office for the balance of his or her predecessor's term of office, being a person nominated in the same manner as that predecessor.

(2A) For the purposes of subclause (3) only, an appointment under subclause (2) does not constitute (and is taken never to have constituted) an appointment for a term of office.

(3) A trustee is not to hold office for 4 consecutive terms.

(4) (Repealed)

4 Public Sector Employment and Management Act 2002 (Chapter 5 excepted) does not apply to trustee

The *Public Sector Employment and Management Act 2002* (Chapter 5 excepted) does not apply to or in respect of the appointment of a trustee and a trustee is not, in his or her capacity as a trustee, subject to that Act during his or her term of office.

5 Remuneration of trustee etc

A trustee, a deputy for a trustee and a member of a committee established under Part 2 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.

6 Removal from office

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

7 Vacation of office

A trustee vacates his or her office if the trustee:

- (a) dies,
- (b) resigns his or her office by writing under his or her 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 or her creditors or makes an assignment of his or her remuneration or estate for their benefit,
- (d) becomes a mentally incapacitated person,
- (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 the trustee 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 or her absence from the meetings,

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

(g) (Repealed)

8 Chairperson

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

(2) A Chairperson of the Trust holds office until his or her successor is nominated by the Minister or until he or she 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 or her term of office if he or she is re-appointed as a trustee for a term commencing immediately after the expiration of his or her last preceding term of office.

(4) At a meeting of the Trust:

(a) the Chairperson, or

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

shall preside.

8A Disclosure of pecuniary interests

(1) If:

(a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust, and

(b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the Trust.

(2) A disclosure by a trustee at a meeting of the Trust that the trustee:

(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 Trust in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Trust.
- (4) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Trust otherwise determines:
 - (a) be present during any deliberation of the Trust with respect to the matter, or
 - (b) take part in any decision of the Trust with respect to the matter.
- (5) For the purposes of the making of a determination by the Trust under subclause (4), a trustee 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 Trust for the purpose of making the determination, or
 - (b) take part in the making by the Trust of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Trust.
- (7) This clause applies to a member of a committee of the Trust and the committee in the same way as it applies to a trustee of the Trust and the Trust.

9 Procedure etc

- (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 or she thinks fit.
- (3) Five 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.

9A Transaction of business outside meetings or by telephone

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

10 Director

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.

Schedule 2 Savings, transitional and other provisions

(Section 24)

Part 1 Preliminary

1 Savings and transitional regulations

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

Historic Houses Amendment Act 2005

- (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 any thing done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of *Historic Houses Amendment Act 2005*

2 Existing trustees

The amendment to section 6 of this Act by the *Historic Houses Amendment Act 2005* does not affect the appointment of any trustee holding office immediately before the commencement of that amendment, and any such trustee continues, subject to Schedule 1 to this Act, to hold office for the balance of his or her term of office.

3 Validation of things done by Trust

Anything done by the Trust before the commencement of this clause that would have been valid if this Act, as amended by the *Historic Houses Amendment Act 2005*, had been in force when the thing was done is validated.