

# National Trust of Australia (New South Wales) Act 1990 No 92

[1990-92]



New South Wales

## Status Information

### Currency of version

Historical version for 6 July 2009 to 5 July 2012 (accessed 19 November 2024 at 17:40)

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**  
[Statute Law \(Miscellaneous Provisions\) Act 2012 No 42](#) (not commenced — to commence on 6.7.2012)

### 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](#).

File last modified 21 June 2012

# National Trust of Australia (New South Wales) Act 1990 No 92



New South Wales

## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act .....	4
2 Commencement .....	4
3 Definitions .....	4
<b>Part 2 The National Trust</b> .....	5
4 Establishment of the Trust .....	5
5 Objects of the Trust .....	5
6 Powers etc of the Trust .....	6
7 Seal of the Trust .....	6
<b>Part 3 Board of the National Trust</b> .....	6
8 The Board .....	6
9 Membership and procedure of the Board .....	7
10 Functions of the Board .....	7
11 Executive Director to manage the Trust .....	7
12 Duties of directors, officers etc .....	7
<b>Part 4 Property and powers of investment</b> .....	8
13 Meaning of “property” and “property transaction” .....	8
14 Power to accept gifts etc .....	8

15 Property to be held subject to trust etc .....	8
16 Power to dispose etc of property .....	8
17 Property transactions and variations of trusts to improve ability of Trust to carry out its objects .....	8
18 Proceeds of property transactions to be held for Trust objects.....	9
19 Protection of persons involved in property transactions.....	9
20 Occupation of Trust properties by members.....	9
21 Land register .....	10
22 Investments.....	10
23 Investment common funds .....	10
24 Terms of trust etc to prevail.....	11
25 Imposition of restrictions or covenants on land.....	11
26 Prohibition on dividends, bonuses etc .....	11
27 Power of the Trust to act as trustee .....	11
28 Power of the Trust to lend money and articles.....	11
29 Exemption from stamp duty .....	11
<b>Part 5 Miscellaneous .....</b>	<b>12</b>
30 Meetings of the Trust.....	12
31 Winding up .....	12
32 By-laws .....	13
33 Rules.....	14
34 Accounts and audit.....	14
35 Copy of reports to be furnished to Minister .....	15
36 Application of provisions of the Companies Code.....	15
37 Regulations.....	16
38 Repeal and dissolution.....	16
39 Savings and transitional provisions .....	16
40 (Repealed) .....	16
<b>Schedule 1 Membership and procedure of the Board .....</b>	<b>16</b>
<b>Schedule 2 Savings and transitional provisions .....</b>	<b>22</b>

# National Trust of Australia (New South Wales) Act 1990 No 92



New South Wales

An Act to make further provision with respect to the constitution, objects and functions of The National Trust of Australia (New South Wales); to repeal *The National Trust of Australia (New South Wales) Act 1960*; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *National Trust of Australia (New South Wales) Act 1990*.

### 2 Commencement

- (1) This Act (section 39 and Schedule 2 excepted) commences on a day or days to be appointed by proclamation.
- (2) Section 39 and Schedule 2 commence on the date of assent.

### 3 Definitions

- (1) In this Act:

**Board** means the board of directors of the Trust.

**director** means any director of the Board (including the Executive Director).

**Executive Director** means the executive director of the Board.

**rules** means rules made by the Trust and in force under this Act.

**special resolution** means a resolution of the Board:

- (a) passed at a meeting of the Board of which not less than 21 days' written notice specifying the intention to propose the resolution as a special resolution has been duly given to all directors of the Board, and
- (b) passed by a majority of not less than three-quarters of the directors of the Board present and entitled to vote at the meeting.

**Trust** means The National Trust of Australia (New South Wales) established by this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Notes included in this Act do not form part of this Act.

## Part 2 The National Trust

### 4 Establishment of the Trust

- (1) There is established by this Act a body corporate to be called The National Trust of Australia (New South Wales), consisting of the persons who under the rules are members of the Trust.
- (2) The Trust is a continuation of, and the same legal entity as, The National Trust of Australia (New South Wales) constituted under *The National Trust of Australia (New South Wales) Act 1960*.
- (3) The Trust is to be considered to be a statutory body and a statutory corporation for the purposes of the *Interpretation Act 1987* but does not represent the Crown.
- (4) Nothing in this Act is to be taken to constitute the Trust as a company for the purposes of any law, or previous law, of the State relating to companies.

### 5 Objects of the Trust

The objects of the Trust are:

- (a) to acquire, control, maintain, protect and preserve for the benefit of the public generally land, buildings, works, structures and articles, of beauty or of national, historical, antiquarian, scientific, artistic, architectural or cultural interest (including Aboriginal relics, Aboriginal rock carvings and Aboriginal rock paintings and archaeological sites), and
- (b) to protect and preserve the natural features of, and to conserve the fauna and flora on, any land referred to in paragraph (a) and acquired by or under the control of the Trust, and
- (c) to encourage and promote, by any means whatever, public appreciation, knowledge and enjoyment of, respect for, and interest in, any land, buildings, works, structures or articles referred to in paragraph (a), and
- (d) to provide and improve amenities on and access to any land, buildings, works and

structures referred to in paragraph (a) and acquired by or under the control of the Trust, and

- (e) to co-operate with any corporation, body or society, either within or outside New South Wales, having objects wholly or substantially similar to the objects of the Trust, in promoting the objects of such corporation, body or society or the Trust.

## **6 Powers etc of the Trust**

The Trust:

- (a) has perpetual succession, and
- (b) is to have a seal, and
- (c) may take proceedings and be proceeded against in its corporate name, and
- (d) may, for the purpose of enabling it to carry into effect or promote its objects, borrow money either with or without security, and purchase, exchange, take on lease, hold, dispose of and otherwise deal with property, and
- (e) may do and suffer all other things that bodies corporate may, by law, do and suffer and that are necessary for, or incidental to, the carrying into effect or promotion of its objects.

## **7 Seal of the Trust**

- (1) The seal of the Trust is to be kept by the Executive Director and is to be affixed to a document only:
  - (a) in the presence of the Executive Director and one other director or in the presence of any 3 directors, and
  - (b) with an attestation by the signatures of those directors of the fact of the affixing of the seal.
- (2) Any document requiring authentication by the Trust may be sufficiently authenticated without the seal of the Trust if it is signed by the President of the Board or the Executive Director or by any member of the staff of the Trust authorised to do so by the President or the Executive Director.

## **Part 3 Board of the National Trust**

### **8 The Board**

- (1) The Trust is to have a board of directors.
- (2) The Board is to consist of:
  - (a) 12 directors elected in accordance with Part 1 of Schedule 1, and

(a1) one director appointed by a unanimous decision of the Board, in accordance with Part 2 of Schedule 1, and

(b) an Executive Director, being a person appointed as Executive Director by the Board.

(3) The Executive Director:

(a) need not be a member of the Trust, and

(b) is appointed for such term as the Board determines, and

(c) is entitled to be paid such remuneration as the Board determines from time to time, and

(d) may be removed from office by the Board or as otherwise provided by this Act.

## **9 Membership and procedure of the Board**

Schedule 1 has effect.

## **10 Functions of the Board**

(1) The Board has the control of the affairs of the Trust and has such other functions as may be conferred or imposed on the Board by or under this or any other Act.

(2) The Board is to exercise its functions in accordance with any directions given by the Trust in general meeting as permitted by the rules.

(3) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is to be taken to have been done by the Trust.

## **11 Executive Director to manage the Trust**

The day to day affairs of the Trust are to be managed by the Executive Director in accordance with the directions of the Board.

## **12 Duties of directors, officers etc**

(1) The directors of the Board have the same general duties as the directors of a company have by law.

(2) Without limiting subsection (1), the following provisions of the *Companies (New South Wales) Code* apply to and in respect of the Trust as if the Trust were a company:

section 229 (Duty and liability of officers)

section 230 (Loans to directors)

section 233 (Benefits for loss of, or retirement from, office)

section 237 (Provisions indemnifying officers or auditors)

Division 2 of Part 14 (Offences)

## **Part 4 Property and powers of investment**

### **13 Meaning of “property” and “property transaction”**

In this Part:

**property** includes any interest in property.

**property transaction** has the meaning given by section 16.

### **14 Power to accept gifts etc**

- (1) The Trust may acquire by gift, bequest or devise any property for the purposes of this Act and may agree to carry out the conditions of any such gift, bequest or devise.
- (2) The rule of law against remoteness of vesting does not apply to or in respect of any condition of a gift, bequest or devise to which the Trust has agreed.

### **15 Property to be held subject to trust etc**

The Trust is to hold any property vested in or held by it in accordance with the terms of any trust or condition affecting the property.

### **16 Power to dispose etc of property**

- (1) The Trust may sell, lease, mortgage, charge or otherwise dispose of, deal with or encumber any property vested in the Trust but, in the case of any property affected by any trust or condition, may do so only:
  - (a) in accordance with the terms of the trust or condition, or
  - (b) as otherwise permitted by this Part.
- (2) The actions in relation to property which are described in subsection (1) are referred to in this Part as **property transactions**.

### **17 Property transactions and variations of trusts to improve ability of Trust to carry out its objects**

- (1) If the Board determines by special resolution that it is necessary or expedient to do so to improve the ability of the Trust to carry into effect or promote its objects generally, the Trust may apply to the appropriate authority for:
  - (a) permission to effect a particular property transaction in relation to specified property vested in the Trust, despite the terms of any trust or condition affecting the property, or



- (b) a variation of the terms of any trust or condition affecting particular property vested in the Trust.
- (2) The appropriate authority is:
  - (a) the Attorney General, in respect of property that the Board is satisfied on reasonable grounds is worth less than \$500,000, or
  - (b) the Supreme Court, in respect of any other property.
- (3) The Attorney General may decline to deal with an application, in which case the Supreme Court is the appropriate authority for the application.
- (4) The appropriate authority may grant an application under this section only if satisfied that the proposed action is just and equitable, taking into account:
  - (a) the Trust's ability to carry into effect or promote its objects generally, having regard to its current and prospective financial position, and
  - (b) any evident intentions of the settlor or donor in creating the trust or imposing the condition.
- (5) On the granting of an application under this section, the Trust is authorised to effect the property transaction concerned (despite the terms of any trust or condition affecting the property), or the variation of the terms of the trust or condition concerned takes effect.

## **18 Proceeds of property transactions to be held for Trust objects**

The proceeds of a property transaction effected by the Trust are to be held and applied for the carrying into effect and promotion of the objects of the Trust.

## **19 Protection of persons involved in property transactions**

- (1) Any property sold or otherwise disposed of by way of a property transaction purporting to have been effected under this Part vests in the person acquiring the property by virtue of the sale or disposition freed and discharged from any trust or condition relating to the sale or disposition of the property or to the use of the property, to which the property was subject in the hands of the Trust.
- (2) A person so acquiring property from the Trust need not be concerned to inquire whether circumstances have arisen to authorise the sale or other disposition or whether the power was otherwise properly and regularly exercised or to see to the application of any consideration paid to the Trust.

## **20 Occupation of Trust properties by members**

The Trust may permit occupation (whether under lease or licence or otherwise) by any member of the Trust of any property or part of property vested in or held by the Trust for

less than market consideration but only if the Board has determined by special resolution that the occupation should be permitted and is justified on the basis of services provided by the person to the Trust.

## **21 Land register**

- (1) The Board is to prepare and maintain a register showing details of:
  - (a) all land vested in or held by the Trust, and
  - (b) the current use of that land.
- (2) The register is to be available for inspection by any person free of charge at the principal office of the Trust during normal business hours.

## **22 Investments**

- (1) The Trust may invest any of the trust funds or other funds of the Trust:
  - (a) in accordance with and subject to the *Trustee Act 1925*, or
  - (b) as otherwise permitted by the terms of any trust or condition affecting the funds.
- (2) The Trust may retain and hold any investment transferred to the Trust otherwise than by purchase even if the investment is not authorised by subsection (1).

## **23 Investment common funds**

- (1) The Trust may establish one or more investment common funds.
- (2) The Trust may from time to time, without liability for breach of trust, bring into or withdraw from any such investment common fund the whole or any part of trust funds or other funds of the Trust.
- (3) Subject to subsection (4), the Trust must periodically distribute the income of each investment common fund among the funds participating in the common fund, having regard to the extent of the participation of each fund in the common fund during the relevant accounting period.
- (4) The Trust may, if it considers it expedient to do so, from time to time add some portion of the income of an investment common fund to the capital of the common fund or use some portion of the income to establish or augment a fund or funds as a provision against capital depreciation or reduction of income.
- (5) If an investment is brought into an investment common fund:
  - (a) the Trust is to be taken to hold the investment on behalf of and for the benefit of the common fund instead of the participating trust fund or other fund, and
  - (b) that participating fund is to be taken to have contributed to the common fund an

amount of money equivalent to the value attributed to the investment by the Trust at the time it is brought into the common fund, and

(c) on the withdrawal of that participating fund from the common fund, the amount of money to be withdrawn is to be the amount equivalent to the value attributed by the Trust to the equity in the common fund of that participating fund at the time of withdrawal.

(6) The inclusion in an investment common fund of trust funds does not affect any trust to which those trust funds (or money attributed to them) are subject.

(7) On the withdrawal of trust funds from an investment common fund, the funds (or money attributed to them) continue to be subject to the trust.

#### **24 Terms of trust etc to prevail**

The investment powers of the Trust and the power of the Trust to bring funds into an investment common fund are subject to the terms of any trust or condition affecting the funds concerned.

#### **25 Imposition of restrictions or covenants on land**

The Trust is to be taken to be a prescribed authority for the purposes of section 88D (Regulation of use of land held by a prescribed authority) of the [Conveyancing Act 1919](#).

#### **26 Prohibition on dividends, bonuses etc**

No dividend, bonus or other profit is at any time to be paid out of the income or property of the Trust to any member of the Trust.

#### **27 Power of the Trust to act as trustee**

The Trust may act as trustee of any land, building, work, structure or article referred to in section 5 (a), if appointed so to act by any person (including the Crown) entitled to appoint such trustees.

#### **28 Power of the Trust to lend money and articles**

Subject to the terms of any trust or condition affecting the money or article, the Trust may, for the purpose of promoting the objects of any corporation, body or society, either within or outside New South Wales, having objects wholly or substantially similar to the objects of the Trust, lend to it any money or articles of the Trust.

#### **29 Exemption from stamp duty**

The [Stamp Duties Act 1920](#) does not apply to or in respect of:

(a) any instrument executed after the commencement of [The National Trust of Australia \(New South Wales\) Act 1960](#) whereby any real or personal property is, or is agreed to

be, conveyed, transferred or leased to, or mortgaged by, the Trust, or

- (b) any devise or bequest in favour of the Trust and taking effect after that commencement.

## **Part 5 Miscellaneous**

### **30 Meetings of the Trust**

- (1) The Board is to call an annual general meeting of members of the Trust in each calendar year for the purpose of:
- (a) declaring the result of the election of directors, and
  - (b) receiving the annual report and financial statements of the Trust from the Board, and
  - (c) appointing auditors, and
  - (d) exercising other functions of the Trust which under this Act or the rules may be exercised only at a general meeting.
- (2) Sections 241 (Convening of general meeting on requisition), 242 (Convening of meetings) and 247 (Circulation of members' resolutions etc) of the *Companies (New South Wales) Code* apply to the Trust in the same way as those sections apply to a company.

### **31 Winding up**

- (1) The Trust may be wound up in the same manner as that in which a company may be wound up under the *Companies (New South Wales) Code* but only on the ground that it is unable to pay its debts, and for that purpose Part 12 (Winding up) of that Code applies to the Trust as if it were a company.
- (2) If the Trust is wound up:
- (a) a person is not, as a present or past member, liable to contribute to the property of the Trust for the purposes of payment of its debts or liabilities or of the costs, charges or expenses of the winding up or for the purposes of the adjustment of the rights of such members among themselves, and
  - (b) the property of the Trust alone is liable for those purposes.
- (3) In the event of the winding up of the Trust, any property vested in the Trust which the regulations provide is "protected property" for the purposes of this section is to be dealt with in accordance with subsection (4).
- (4) The liquidator appointed for the winding up of the Trust is to transfer any protected property to such body or person as the Minister may direct, on such terms (including

as to any consideration to be paid) as the Minister thinks appropriate.

- (5) Property ordered to be transferred under this section is not liable to be applied in discharge of the Trust's debts or liabilities or the costs, charges and expenses of the winding up but is to be transferred subject to any trust, mortgage, charge or encumbrance to which it was subject immediately before being prescribed as protected property.
- (6) A regulation that prescribes property as protected property can be made only on the recommendation of the Minister and the Minister is not to recommend the regulation unless satisfied that the property concerned is of special significance.

### **32 By-laws**

- (1) In this section, ***Trust property*** means:
  - (a) land, buildings, works, structures or articles referred to in section 5 (a) and acquired by or under the control of the Trust, or
  - (b) land acquired by or under the control of the Trust and used in conjunction with any building, work or structure referred to in paragraph (a).
- (2) The Board may make by-laws, not inconsistent with this Act, for or with respect to:
  - (a) the care, control and management of Trust property, and
  - (b) the regulation of the use and enjoyment of Trust property, and
  - (c) the securing of decency and order on Trust property, and
  - (d) the removal of trespassers and other persons causing annoyance or inconvenience on or in Trust property, and
  - (e) the regulation or prevention of the taking of intoxicants on to or into, and the consuming of them on or in, Trust property, and
  - (f) the regulation and control of the taking of animals on to or into Trust property or the permitting or allowing of animals to be on or in Trust property, and
  - (g) the regulation, control or prohibition of parking, camping or residing on or in Trust property, the making of charges for that parking, camping or residing, and the collecting and receiving of those charges by the Board or by other persons, and
  - (h) the preservation or protection of, or prevention of damage to, trees, shrubs, ferns, creepers, vines, palms, plants, flowers, herbage or other vegetative cover on Trust property, and
  - (i) the protection or removal of any dead timber, logs and stumps, whether standing or fallen, on any Trust property, and

- (j) the preservation, protection or removal of any rocks, soil, sand, stone or other similar substances on or under or comprising part of Trust property, and
  - (k) the preservation or protection of any animals, birds and fish and any other fauna of any nature whatever and whether naturally occurring or introduced on Trust property, and
  - (l) the making of charges or entrance fees on persons, clubs or associations using or entering on Trust property, or any specified part or parts of Trust property, and the collecting and receiving of those charges and fees by the Board, or by other persons, and
  - (m) generally any matters necessary or convenient for carrying out or giving effect to this Act, not being matters for and with respect to which rules may be made.
- (3) The by-laws may create an offence punishable by a penalty not exceeding 10 penalty units.
  - (4) Proceedings for an offence under the by-laws are to be disposed of summarily before the Local Court.
  - (5) A by-law made by the Board is to be sealed with the common seal of the Trust and does not have effect unless approved by the Governor.

### **33 Rules**

The Trust may in general meeting make rules, not inconsistent with this Act or the by-laws, for or with respect to:

- (a) regulating the affairs, business and management of the Trust, and
- (b) the method and time of convening, holding and adjourning meetings of the Trust and the Board, the voting at such meetings (including postal and proxy voting), the conduct and record of the business of the Trust and the Board, and the quorum at meetings of the Trust, and
- (c) the election of directors of the Board, and
- (d) regulating the admission, resignation and expulsion of members of the Trust, and
- (e) all matters which are required or permitted by this Act to be prescribed by the rules.

### **34 Accounts and audit**

- (1) Part 6 (Accounts and audit) of the *Companies (New South Wales) Code* applies to and in respect of the Trust in the same way as that Part applies to a company.
- (2) If the Minister so directs, the Auditor-General is to inspect, examine and audit, and report to the Minister on, the books and accounts of the Trust and for that purpose

Division 2 (Audit—generally) of Part 3 of the *Public Finance and Audit Act 1983* is to apply as if the Trust were an authority within the meaning of that Act.

### **35 Copy of reports to be furnished to Minister**

Within 30 days after each annual general meeting of the Trust, the Board is to furnish to the Minister for presentation to Parliament a copy of the annual report and financial statements of the Trust laid before the meeting.

### **36 Application of provisions of the Companies Code**

- (1) Provisions of the *Companies (New South Wales) Code* that apply to or in respect of the Trust under a provision of this Act apply subject to any modifications prescribed by the regulations under this Act.
- (2) References in this Act to provisions of the *Companies (New South Wales) Code* include references to any regulations in force under those provisions.
- (3) It is declared that the provisions of this Act that refer to, or apply to a matter, provisions of the *Companies (New South Wales) Code* have effect (and are taken at all times on or after their commencement to have had effect) according to their tenor and despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions (as defined in that Act) of the State.
- (4) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
  - (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
  - (b) a specified provision of that legislation, or
  - (c) that legislation other than a specified provision, or
  - (d) that legislation otherwise than to a specified extent.

#### **Note—**

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (5) In this section:

***matter*** includes act, omission, body, person or thing.

### 37 Regulations

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.

### 38 Repeal and dissolution

- (1) *The National Trust of Australia (New South Wales) Act 1960* is repealed.
- (2) The Council of the National Trust established under the *National Trust of Australia (New South Wales) Act 1960* is dissolved.

### 39 Savings and transitional provisions

Schedule 2 has effect.

### 40 (Repealed)

## Schedule 1 Membership and procedure of the Board

(Section 9)

### Part 1 Directors elected by the Trust

#### 1 Definitions

In this Part:

***elected director*** means a director of the Board other than the Executive Director or the director referred to in section 8 (2) (a1).

#### 2 Election of directors

- (1) The elected directors are to be elected by the Trust in accordance with the rules from among the members of the Trust.
- (2) A person is not eligible for election as a director if the person:
  - (a) is under the age of 18 years, or
  - (b) holds any office or place of profit under the Trust.
- (3) The rules for the election of directors must be such as to ensure that of the elected directors who from time to time constitute the Board:
  - (a) at least 2 are persons ordinarily resident in the Sydney metropolitan area, and
  - (b) at least 3 are persons not ordinarily resident in the Sydney metropolitan area but ordinarily resident elsewhere in New South Wales.



(4) The rules for the election of directors must provide for the individual election of directors.

(5) In this clause:

**Sydney metropolitan area** means the area comprising the following local government areas:

Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Blue Mountains, Botany, Burwood, Camden, Campbelltown, Canterbury, Concord, Drummoyne, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby, Wollondilly, Woollahra, Wyong.

### 3 Acting directors

- (1) Each elected director may, from time to time in accordance with the rules, appoint a person to be an acting director in his or her place and may revoke any such appointment.
- (2) The Board may, from time to time, appoint a person to be acting Executive Director and may revoke any such appointment.
- (3) In the absence of a director, the acting director for that director:
  - (a) is, if available, to act in the place of the director, and
  - (b) while so acting, has all the functions of the director and is to be considered to be a director, subject to the rules in the case of an acting elected director and to any direction of the Board in the case of the acting Executive Director.

### 4 Rotation of directors

- (1) For the purposes of this clause, the first Board elected after the date of assent is to be divided into 2 classes of equal number, with:
  - (a) the first class consisting of the directors who are declared to be first elected at the election, as provided by the rules, and
  - (b) the second class consisting of the other directors elected at the election.
- (2) The offices of the directors of the second class become vacant at the time of the annual general meeting of the Trust held in the year following the year of the election at which they were elected.
- (3) The offices of directors of the first class become vacant at the time of the annual general meeting of the Trust held in the second year following the year of the election

at which they were elected.

(4) Thereafter, the office of an elected director becomes vacant at the time of the annual general meeting of the Trust held in the second year following the year of the annual general meeting at which the director was declared elected.

(5) In this clause:

**year** means calendar year.

## **Part 2 Director appointed by the Board**

### **4A Definition**

In this Part:

**Board-appointed director** means the director referred to in section 8 (2) (a1).

### **4B Appointment of Board-appointed director**

- (1) The Board-appointed director is to be appointed by unanimous decision of the directors referred to in section 8 (2) (a).
- (2) A person is not eligible for appointment as the Board-appointed director if the person:
  - (a) is under the age of 18 years, or
  - (b) holds any office or place of profit under the Trust, or
  - (c) holds or has held the office of Board-appointed director, or
  - (d) was a candidate for election as a director referred in section 8 (2) (a) at the most recent election held for such directors.

### **4C Acting Board-appointed director**

- (1) The Board-appointed director may, from time to time and in accordance with the rules, appoint a person to be an acting Board-appointed director in his or her place and may revoke any such appointment.
- (2) In the absence of the Board-appointed director, any acting Board-appointed director for that director:
  - (a) is, if available, to act in the place of the Board-appointed director, and
  - (b) while so acting, has all the functions of the Board-appointed director and is to be considered to be a director, subject to the rules.

### **4D Term of office of Board-appointed director**

Subject to this Schedule, a Board-appointed director holds office for such period (not

exceeding 2 years) as is specified in the Board-appointed director's instrument of appointment.

## **Part 3 General**

### **4E Definition**

In this Part:

***non-executive director*** means a director of the Board other than the Executive Director.

### **5 President, Deputy President and Treasurer**

- (1) At the first meeting of the Board held after each annual general meeting of the Trust, the directors are to elect from among themselves in accordance with the rules a President, Deputy President and Treasurer.
- (2) The President, Deputy President and Treasurer hold office until the election of their successors at the corresponding meeting of the Board in the following calendar year.
- (3) The Board may remove a director from the office of President, Deputy President or Treasurer at any time.
- (4) A person who holds the office of President, Deputy President or Treasurer vacates that office if the person:
  - (a) is removed from that office by the Board, or
  - (b) resigns that office by instrument in writing addressed to the Board, or
  - (c) ceases to be a director.

### **6 Casual vacancy in office of director**

The office of a director becomes vacant if the director:

- (a) dies, or
- (b) completes a term of office and is not re-elected or re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Board, or
- (d) except in the case of the Executive Director, ceases to be a member of the Trust, or
- (e) in the case of the Executive Director, is removed from office by the Board under section 8 (The Board), or
- (f) is removed from office in accordance with section 225 of the *Companies (New South Wales) Code*, which by virtue of this section applies as if the Trust were a company, or
- (g) is absent from 3 consecutive meetings of the Board of which reasonable notice has

been given to the director personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the Board for having been absent from those meetings, or

- (h) vacates office under clause 8 (Disclosure of pecuniary interests), or
- (i) 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
- (j) becomes a mentally incapacitated person, or
- (k) 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.

## **7 Vacancy in office of non-executive director**

- (1) If the office of a non-executive director becomes vacant under clause 6, the Board may appoint a member of the Trust to fill the vacancy during the remainder of the term of office of the director unless, in the case of a vacancy under clause 6 (f), the vacancy is filled under subclause (3).
- (2) In the absence of a quorum, the Executive Director is to appoint a sufficient number of persons under subclause (1) to constitute a quorum.
- (3) If the office of a non-executive director becomes vacant under clause 6 (f), the vacancy may be filled during the remainder of the term of office of the director, in accordance with the rules, at the meeting at which the director is removed.

## **8 Disclosure of pecuniary interests**

- (1) If:
  - (a) a director 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 director's duties in relation to the consideration of the matter,the director is, as soon as possible after the relevant facts have come to the director's knowledge, to disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a director at a meeting of the Board that the director:
  - (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 are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours at the principal office of the Trust to inspection by any member of the Trust on payment of the fee determined by the Board.
- (4) After a director has disclosed the nature of an interest in any matter, the director is not, unless the Board by special resolution otherwise determines:
  - (a) to be present during any deliberation of the Board with respect to the matter, or
  - (b) to 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 director who has a direct or indirect pecuniary interest in a matter to which the disclosure relates is not:
  - (a) to be present during any deliberation of the other directors for the purpose of making the determination, or
  - (b) to take part in the making by the other directors of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) A director who contravenes this clause vacates office as a director.

## **9 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 rules, to be as determined by the Board.

## **10 Quorum**

The quorum for a meeting of the Board is 7 directors.

## **11 Presiding member**

- (1) The President of the Board or, in the absence of the President, the Deputy President, or in the absence of both the President and the Deputy President, another director elected to chair the meeting by the directors present is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the

event of an equality of votes, has a second or casting vote.

## 12 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.

## Schedule 2 Savings and transitional provisions

(Section 39)

### 1 Definitions

In this Schedule:

**administrator** means the person appointed for the time being under section 13A of the *Charitable Collections Act 1934* to be administrator of the Trust.

**former Act** means *The National Trust of Australia (New South Wales) Act 1960*.

### 2 First election of directors

As soon as practicable after the Minister approves rules under clause 6:

- (a) the elected directors (within the meaning of Schedule 1) are to be elected, and
- (b) the result of the election is to be declared.

### 3 First Executive Director

The first Executive Director of the Board is to be appointed by the administrator for a term not exceeding 2 years and is not subject to removal by the Board during the term of that appointment.

### 4 Revocation of appointment of administrator

The administrator is to declare the result of the first election of directors after the commencement of this Schedule by notice sent by post to the members of the Trust and the administrator's appointment is thereupon revoked.

### 5 Appointments etc before commencement

- (1) For the purposes only of enabling the Board to be constituted in accordance with this Act on or after (but not before) the commencement of section 8 (The Board), appointments may be made and elections may be held under this Act, and anything else may be done, before that commencement, as if the whole of this Act commenced on the date of assent.
- (2) No appointment as a director of the Board as so constituted takes effect before the commencement of section 8.

## **6 Rules**

- (1) The Minister is to approve rules containing such provisions as the Minister thinks fit as the new rules of the Trust.
- (2) The rules so approved by the Minister replace the current rules of the Trust and, on the commencement of section 33 (Rules), are to be regarded as having been made under that section by the Trust in general meeting and may accordingly be amended or revoked by the Trust in general meeting.

## **7 By-laws under former Act**

The by-laws in force under the former Act immediately before its repeal continue in force as if they had been made by the Board under this Act and may be amended or revoked accordingly.

## **8 References to The National Trust of Australia (New South Wales)**

From the commencement of section 8 (The Board) a reference in any instrument to The National Trust of Australia (New South Wales) is to be read as a reference to the Trust.

## **9 Current investments authorised to be retained**

The Trust may retain and hold any investment held by the Trust under section 19 of the former Act immediately before the repeal of that section even if that investment would not be authorised under this Act.

## **10 Savings and transitional regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to this Act or a later date.
- (3) To the extent to which a provision referred to in subclause (1) 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.