

# 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—

- **Does not include amendments by**  
[Forestry Act 2012 No 96](#) (not commenced — to commence on 1.1.2013)

### Authorisation

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New South Wales

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# 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 Income Tax Assessment Act** means the *Income Tax Assessment Act 1997* of the Commonwealth.

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

**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.

**land** includes any water on or under the surface of land.

**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.

**Public Fund** means the Nature Conservation Trust of New South Wales Public Fund established under section 27A.

**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 natural heritage (and any cultural heritage associated with natural heritage), as to warrant any one or more of the following:
  - (a) the making of a 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 this Act (in relation to Trust agreements).

## 7 Meaning of “Revolving Fund Scheme”

- (1) 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 protective covenant to be registered on the title to the land, and
  - (c) sells or leases the land subject to that protective 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.
- (2) The Trust may sell or lease any part of land that is bought or acquired under the scheme, without arranging for a protective covenant to be registered on the title to that part, if the Trust decides that the part of the land concerned is of low or no conservation value. The proceeds of the sale or lease are to be used under the scheme in the same way as the proceeds of sale or lease of land the subject of a

protective covenant.

- (3) In this section, a **protective covenant** means a covenant the purpose of which is to protect natural heritage (and any cultural heritage associated with natural heritage).

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

### **Division 1 Constitution, object 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 Object of Trust**

- (1) The object of the Trust is to protect and enhance natural heritage (including any cultural heritage associated with natural heritage) by:
- (a) encouraging 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), and
  - (b) providing mechanisms for achieving conservation of that heritage, and
  - (c) promoting 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.
- (2) The co-operative arrangements for the management and protection of land may



include arrangements for the management and protection of any waters that affect the natural heritage of the land (and any cultural heritage associated with natural heritage), whether or not the waters are on or under the surface of the land.

- (3) The affairs of the Trust are to be conducted on a not-for-profit basis.
- (4) The object of the Trust is also its principal purpose.

**Note—**

For donations to the Public Fund maintained by the Trust to have tax deductible status under Subdivision 30-E of the Commonwealth Income Tax Assessment Act, the Trust must have as its principal purpose the protection and enhancement of the natural environment or a significant aspect of the natural environment.

## **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 the Public Fund and such other funds as are appropriate to its activities,
  - (c) to raise money from organisations and the general public to help fund its activities,
  - (d) to use any gifts or contributions received by the Trust for the protection and enhancement of natural heritage (and any cultural heritage associated with natural heritage),
  - (e) to negotiate, enter into, monitor and enforce compliance with Trust agreements,
  - (f) 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,
  - (g) to provide education to the public on issues of conservation, land management and ecological sustainability.
- (3) In this section, **gift** includes a devise or bequest.

## **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,
  - (b1) to buy or otherwise acquire, sell, hold, create security interests in and otherwise deal in access licences, holdings in access licences and water authorities in any manner permitted by the [Water Management Act 2000](#) or the [Water Act 1912](#),
  - (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 object 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 object 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.
- (4) In this section:
- water authority** means a licence or permit under the [Water Act 1912](#).

### 13 Seal of Trust

- (1) The seal of the Trust is to be kept by the Chief Executive Officer of the Trust or a member of the Board authorised by the Board to keep it.
- (2) The seal of the Trust is to be affixed to a document only:
  - (a) in the presence of the Chief Executive Officer or a member of the Board who is authorised to do so by the Board generally or in a particular case or class of cases, and
  - (b) with an attestation by the signature of the Chief Executive Officer or member, as the case may be, of the fact of the affixing of the seal.

### 14 Acquisition of property by gift

- (1) The Trust may acquire any property by gift (whether on trust or otherwise) for the purposes of this Act and may agree to, and carry out, the conditions of any such gift,

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 to which the Trust has agreed under this section.
- (3) The *Duties Act 1997* does not apply to or in respect of any gift made or to be made to the Trust.
- (4) The Trust must not agree to any condition of a gift of money or property that is made to or to be held in the Public Fund.

**Note—**

Gifts of money or property made to the Public Fund may be used only for the principal purpose of the Trust.

- (5) In this section, **gift** includes a devise or bequest.

## **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 9 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 Department of Environment and Climate Change, and
  - (b) 8 are to be non-government members, being members of the public (any one or more of whom may be a representative of any non-government agency).
  - (c) (Repealed)
- (1A) The Chief Executive Officer of the Trust is not to be appointed as a member of the Board.
- (2) The Minister is not to appoint a non-government member to the Board unless the Minister is satisfied that the person has skills and experience in one or more of the following areas:
  - (a) increasing public knowledge, understanding and appreciation of the importance of natural and cultural heritage by private landholders and other community members,

- (b) protection and conservation of natural heritage,
  - (c) protection and conservation of cultural heritage,
  - (d) management of natural resources, including agricultural land,
  - (e) land use planning and operation of local councils,
  - (f) marketing and fundraising,
  - (g) economics and financial management,
  - (h) governance and administration,
  - (i) decision making and leadership.
- (3) The Minister is to ensure, as far as is possible, that the composition of the Board is such that the members of the Board together have all of the skills and experience specified in subsection (2).

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

- (1) This section applies in respect of the appointment of non-government members of the Board.
- (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 skills and experience 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 object,
  - (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 object 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 any regulations made under section 46 (2) (a).

### **23 Consideration of plan**

- (1) The Minister is 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 any regulations made under section 46 (2) (a).
- (2) The Minister may 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 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.

#### **27A Public Fund**

- (1) The Trust is to establish and maintain a public fund for the principal purpose of the Trust.

- (2) The fund is to be called the Nature Conservation Trust of New South Wales Public Fund.
- (3) The Public Fund is not-for-profit.
- (4) The following are to be held in the Public Fund:
  - (a) all gifts of money or property made for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the Commonwealth Income Tax Assessment Act,
  - (b) all contributions made in relation to a fundraising event held for the principal purpose of the Trust that are to be made to the Public Fund under section 30-130 of the Commonwealth Income Tax Assessment Act,
  - (c) any money received by the Trust because of such gifts or contributions.
- (5) No other money or property is to be held in the Public Fund.
- (6) Money and property held in the Public Fund may be used by the Trust only for its principal purpose.
- (7) Money held in the Public Fund is to be paid into an account kept, for the purposes of the Public Fund, with an authorised deposit-taking institution.
- (8) The Trust must comply with any requirements made of it in connection with registration as an environmental organisation under Subdivision 30-E of the Commonwealth Income Tax Assessment Act.
- (9) In particular, the Trust must:
  - (a) comply with any rules made by the Treasurer and the Environment Minister under Subdivision 30-E of the Commonwealth Income Tax Assessment Act to ensure that gifts or contributions made to the Public Fund are used only for its principal purpose, and
  - (b) provide to the Environment Secretary under Subdivision 30-E of the Commonwealth Income Tax Assessment Act, within 4 months after the end of each financial year of the Trust, any statistical information about gifts or contributions made to the Public Fund during that financial year required for the purposes of compliance with that Act.
- (10) The Trust must appoint a management committee to manage the Public Fund on its behalf.

## 28 Operating accounts

- (1) The Trust is to establish and maintain an account (an **operating account**) that is separate from the account kept for the purposes of the Public Fund.



- (2) More than one operating account may be established.
- (3) There is to be paid into an operating account:
  - (a) all money received by or on account of the Trust that is not required to be held in the Public Fund, and
  - (b) the proceeds of investment of such money, and
  - (c) all money borrowed by or advanced to the Trust, and
  - (d) all money directed to be paid into an operating account by or under this or any other Act.
- (4) The money in an operating account 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.
- (5) An operating account is to be kept with an authorised deposit-taking institution.

## **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 development (within the meaning of the *Environmental Planning and Assessment Act 1979*) of land or specified areas of land,

**Note—**

Development, as defined by the *Environmental Planning and Assessment Act 1979*, includes the use of land, the subdivision of land, the erection of buildings on land and the carrying out of work on 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 or to refrain from carrying 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 a day specified in the agreement, and
  - (b) remains in force for such period as is specified in the agreement or, if no period is specified, until it is terminated under subsection (2).
- (2) Despite subsection (1), a Trust agreement may be terminated at any time by consent of all 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 must:
- (a) in the case of a Trust agreement relating to land under the *Real Property Act 1900*—make an entry concerning the agreement in any folio of the Register kept under that Act that relates to that land, or
  - (b) in the case of a Trust agreement relating to land not under the *Real Property Act 1900*:
    - (i) register the agreement in the General Register of Deeds kept under Division 1 of Part 23 of the *Conveyancing Act 1919*, and
    - (ii) if appropriate, make an entry concerning the agreement in any official record relating to Crown land that relates to that land.
- (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.

### **38A Application of [Environmental Planning and Assessment Act 1979](#)**

- (1) For the purposes of section 28 of the [Environmental Planning and Assessment Act 1979](#):
  - (a) a Trust agreement is taken to be a regulatory instrument, and
  - (b) the Minister is responsible for the administration of such a regulatory instrument.

**Note—**

Section 28 of the [Environmental Planning and Assessment Act 1979](#) allows an environmental planning instrument to suspend the operation of a regulatory instrument for the purpose of enabling development to be carried out. Such a suspension cannot be given effect to without the concurrence in writing of the Minister responsible for the administration of the regulatory instrument.

- (2) In relation to any particular Trust agreement, a provision of an environmental planning instrument made under section 28 of the [Environmental Planning and Assessment Act 1979](#) and in force:
  - (a) immediately before the commencement of this section, or
  - (b) immediately before the Trust agreement takes effect,does not affect the operation of the Trust agreement unless the provision is subsequently amended to expressly affect the operation of the Trust agreement.

### **38B Application of rate exemptions under [Local Government Act 1993](#)**

- (1) A council may, by notice in writing to the land holder, exempt from all rates under the [Local Government Act 1993](#) land that is the subject of a Trust agreement.
- (2) In such a case, section 555 of the [Local Government Act 1993](#) applies in respect of land the subject of the Trust agreement in the same way as it applies in respect of land the subject of a conservation agreement (within the meaning of the [National Parks and Wildlife Act 1974](#)).
- (3) However, a reference in section 555 (3) of the [Local Government Act 1993](#) to a period on or after 1 July 2008 is to be read, in relation to the Trust agreement, as a reference to a period in respect of which the exemption is granted.

## **Part 4 Miscellaneous**

### **39 Register of agreements**

- (1) The Trust must keep a written register of all Trust agreements.
- (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) (Repealed)

#### **44A Distribution of outstanding property on winding up**

- (1) On a winding up of the Trust, the liquidator is to transfer any outstanding property held in the Public Fund after the Trust is wound up to a tax exempt fund that is maintained for a similar purpose to the principal purpose of the Trust.
- (2) A **tax exempt fund** is a fund that is on the register of environmental organisations kept under Subdivision 30-E of the Commonwealth Income Tax Assessment Act.
- (3) Preference is to be given to a tax exempt fund that is used for the protection of the natural heritage (and any cultural heritage associated with natural heritage) of New South Wales.
- (4) The liquidator may also transfer any other outstanding property of the Trust after the Trust is wound up to that tax exempt fund or to any other body or fund having a similar purpose to the principal purpose of the Trust.
- (5) Preference is to be given to a fund used for, or a body that has functions with respect to, the protection of the natural heritage (and any cultural heritage associated with natural heritage) of New South Wales.
- (6) This section applies despite the provisions of the *Corporations Act 2001* of the Commonwealth, as applied by this Act to a winding up or dissolution of the Trust.

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

Nothing in this Act prevents a landholder who is a party to a Trust agreement 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 the *Nature Conservation Trust Amendment Act 2010*.
- (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) Section 19 does not apply to the re-appointment of a member that is for a period of 12 months or less, but only in respect of the first re-appointment of that member.

### **3 Remuneration**

- (1) A non-government 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 to be paid from an operating account.

### **4 (Repealed)**

### **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)—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 object 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 5 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)

### **Part 1 General**

#### **1 Regulations**

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

this Act

*Nature Conservation Trust Amendment Act 2010*
- (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.

## **Part 2 Provisions consequent on enactment of [Nature Conservation Trust Amendment Act 2010](#)**

### **2 Changes to membership arrangements**

- (1) An amendment made to section 18 by the [Nature Conservation Trust Amendment Act 2010](#) applies only in respect of the appointment of a non-government member to the Board that is made on or after the commencement of the amendment.
- (2) On the repeal of clause 4 of Schedule 1 by the [Nature Conservation Trust Amendment Act 2010](#), the appointment of any deputy to a member is revoked.

### **3 Establishment of Public Fund and related changes**

- (1) The Public Fund amendments apply only in respect of money and property received by the Trust on or after the commencement of the amendments.
- (2) Any Trust Account established under section 28 before the commencement of the Public Fund amendments becomes, on the commencement of those amendments, an operating account.
- (3) The **Public Fund amendments** are the amendments made to section 14 and Division 4 of Part 2 of this Act by the [Nature Conservation Trust Amendment Act 2010](#).

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