

# McGarvie Smith Institute Incorporation Act 1928

## No 28

[1928-28]



New South Wales

### Status Information

#### Currency of version

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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.

#### Responsible Minister

- Minister for Agriculture

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

#### Authorisation

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# McGarvie Smith Institute Incorporation Act 1928 No 28



New South Wales

An Act to incorporate and to promote the objects of the McGarvie Smith Institute; to confer and impose upon that body certain powers, duties, rights, and liabilities; to transfer and vest in it the property of the said Institute; and for purposes connected therewith.

## 1 Name of Act

This Act may be cited as the *McGarvie Smith Institute Incorporation Act 1928*.

## 2 Definitions

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

**Body corporate** means the body corporate constituted by this Act.

**Duly verified** means sealed with the seal of the body corporate and certified as correct by a member of its governing body.

**Founder** means the late John McGarvie Smith.

**Registered** means registered in the office of the Registrar-General.

## 3 Incorporation

- (1) For the purposes of carrying out the wishes of the founder and for the benefit of the pastoralists of the State of New South Wales a body corporate is hereby constituted, to be known as the McGarvie Smith Institute.
- (2) The said McGarvie Smith Institute shall by that name have perpetual succession and a common seal, and may sue and be sued or otherwise appear and answer, be answered or proceed, or be proceeded against in all courts.
- (3) The body corporate shall be capable in law of taking, purchasing, and holding to it and its successors, and may take, purchase, and hold lands and other real estate and chattels and other personal property, and shall be capable of selling, demising, or otherwise disposing of, and may sell, demise, or otherwise dispose of the same for the purposes of the body corporate, and shall have power to do all other things incidental

to a body corporate.

#### **4 Vesting of property**

- (1) All property real or personal vested in or held by or on behalf of the trustees of the unincorporated body known as the McGarvie Smith Institute is hereby transferred to and vested in the body corporate and the trustees of the said unincorporated body are hereby divested of all such property of which they are seised or possessed as such trustees, and all property held by the trustee of the will of the late John McGarvie Smith in trust for the McGarvie Smith Institute but subject to any life estates or interests shall be held by the said trustees subject to the said estates or interests in trust for the body corporate.
- (2) The body corporate shall be entitled to the benefit of all contracts entered into by the trustees of the said unincorporated body and to carry the same into effect and to sue upon the said contracts as if they had been entered into by the body corporate.

#### **5 Objects and powers**

It shall be lawful for the body corporate:

- (a) To engage in the preparation, manufacture, cultivation, distribution, and sale, either in Australia or elsewhere, of the vaccine known as the McGarvie Smith Vaccine, and of any other vaccine, medicine, or preparation which the trustees may think fit.
- (b) To promote and advance, either alone or in conjunction with any other person or body corporate, or with the Department of Industry and Investment of New South Wales, veterinary science and the sciences of pathology, microbiology, parasitology, or any allied science, so far as they relate to veterinary science, and to engage in the promotion of scientific research and the equipment of laboratories in New South Wales or elsewhere in such manner and at such cost as the trustees may from time to time determine.
- (c) To take or accept any gift, subsidy, or endowment, whether subject to any special trust or not, for all or any of the objects of the body corporate and to carry out any special trust to which such gift, subsidy, or endowment may be subject according to the terms thereof.
- (d) To promote the passing of or enforcing or to join with any person or body corporate in having passed or enforced any legislation having for its object the promotion of the purposes for which the body corporate is established.
- (e) To apply for and take out, purchase or otherwise acquire, any patents, patent rights, or inventions, copyright, or process, whether in Australia or elsewhere, which in the opinion of the trustees may be useful for the purposes of the body corporate, and to grant licences to use the same.

- (f) To open and carry on branches and agencies for the purposes of the body corporate in any part of the world.
- (g) To enter into any arrangement with any Government or other authority, whether in New South Wales or elsewhere, and to obtain from such authority any rights, concessions, charters, or privileges that may be thought conducive to the purposes of the body corporate.
- (h) To amalgamate with any company or person on such terms as they may deem expedient or to acquire and carry on the business of any company, association, firm, or person having objects similar to those of the body corporate or whose business can be carried on in connection with that of the body corporate whether in New South Wales or elsewhere.
- (i) To draw, accept, and make, and to endorse, discount, and negotiate bills of exchange and promissory notes and to mortgage or charge any of the property of the body corporate.
- (j) To pay interest on the sum of ten thousand pounds lent by the founder in the manner provided by an indenture dated the sixteenth day of July, one thousand nine hundred and eighteen, made between John McGarvie Smith, of Woollahra, near Sydney, of the first part, the Honorable Thomas Waddell, Member of the Legislative Council, the Honorable Alfred Edgar Hunt, Member of the Legislative Council, the Honorable James Ashton, Member of the Legislative Council, William Fleming Latimer, Member of the Legislative Assembly, John Mackay (President of the Graziers' Association), James Kidd (President of the Sheepbreeders' Association), Kenneth de Lacy Cudmore (Manager, Goldsbrough, Mort and Company, Limited), of the second part, and the Honorable William Arthur Holman, of Sydney, Premier of the State of New South Wales, for and on behalf of the Government of New South Wales, of the third part, to the persons therein named.
- (k) To pay any balance that may remain in the hands of the trustees or to the credit of the body corporate in any one year after carrying on the business of the body corporate and making such provision for the future working thereof as the trustees may think fit into the Consolidated Revenue of the State of New South Wales.
- (l) To expend any of the funds of the body corporate upon any of the purposes aforesaid.

## **6 Members**

The members of the body corporate shall be the persons who are now trustees of the unincorporated body known as the McGarvie Smith Institute, together with all persons who may hereafter be appointed as trustees in accordance with this Act.

## **7 Management**

- (1) The affairs of the body corporate shall be managed and controlled by the trustees.

- (2) The first members and trustees shall be the Honorable Thomas Waddell, Member of the Legislative Council, the Honorable Alfred Edgar Hunt, Member of the Legislative Council, James Kidd, Kenneth de Lacy Cudmore, George Valder, William Wilson Killen, Member of the House of Representatives, and Herbert Robert Seddon, of whom the Honorable Alfred Edgar Hunt, Member of the Legislative Council, George Valder, and Herbert Robert Seddon, and their successors shall be Government representatives on the body corporate.
- (3) The trustees shall be entitled to act by a majority of those present at any meeting duly convened.
- (4) The office of a trustee shall be vacated:
  - (a) If he becomes bankrupt or suspends payment, assigns his estate for the benefit of or compounds with his creditors.
  - (b) If he is found lunatic or becomes of unsound mind or of such infirm health as to be incapable of managing his affairs.
  - (c) If he is absent from the meetings of trustees continuously for three consecutive months without special leave from the majority of the trustees.
  - (d) If by notice in writing delivered to the chairman of trustees or secretary of the body corporate he resigns his office.
- (5) Any vacancies among the trustees, whether by death or otherwise, whereby the number of trustees shall be reduced to less than seven shall be filled in manner following:
  - (a) if the vacancy is in the office of a trustee who is a Government representative, by the appointment of a person by the Governor signified by notification published in the Gazette,
  - (b) if the vacancy is in the office of a trustee who is not a Government representative, by resolution of the trustees passed at a meeting duly convened for the purpose and published in the Gazette.
- (6) No act of the body corporate shall be invalid by reason of the fact that at the time of such act a vacancy existed among the trustees and had not been filled.
- (7) The first chairman of trustees of the body corporate shall be the Honorable Thomas Waddell, Member of the Legislative Council.

Any vacancy in the position of chairman, however occurring, shall be filled by the trustees.

## **8 Nomination of persons to be members**

The trustees may, with the approval of the Governor, at any time nominate and appoint any person whom they may consider qualified by reason of his scientific or business attainments or by reason of his standing as a pastoralist to be a trustee, and any person so nominated shall be a member of the said body corporate.

## **9 Registration of members**

- (1) A memorial duly verified, setting out the names and addresses of the members of the body corporate, together with particulars of the offices which they respectively hold, shall be registered within one calendar month after the date of the passing of this Act or within such further time as the Governor may allow.
- (2) Whenever any change is made or occurs in the body corporate, whether by new appointment, retirement, removal, death, or otherwise, a memorial duly verified, setting out particulars of the change, shall be registered within fifteen days after the change has been made or occurs, or within such further time as the Governor may allow.

## **10 Powers to make rules**

The trustees of the body corporate may from time to time, with the approval of the Governor, make rules for the conduct of the affairs, management, and generally for the carrying on of the business of the body corporate and for carrying into effect the provisions and objects of this Act, and may from time to time alter or repeal all or any of its rules, and may make new rules.

In particular and without restricting the generality of the foregoing provision the trustees may make rules:

- (a) for regulating the times and modes of calling meetings, for fixing the quorum of meetings, and for regulating the transaction of business at meetings,
- (b) for the exercise by the body corporate of all or any of its powers,
- (c) for the application or investment of its funds,
- (d) for the appointment of officers of the body corporate and for the retirement or removal of such officers,
- (e) for the admission or qualification of persons as members of the body corporate,
- (f) for the appointment of staff and servants,
- (g) generally for the management and government of the body corporate and of all its officers and servants:

Provided always that no rule shall be in any way repugnant to or inconsistent with the

provisions of this Act.

## **11 Registration of rules**

- (1) A copy of the rules of the body corporate shall be registered within one calendar month after the passing of this Act or within such further time as the Governor may allow.
- (2) Whenever any rule is altered or any new rule is made, a copy of the alteration or new rule duly verified shall be registered within fifteen days after the alteration or new rule is made or within such further time as the Governor may allow.
- (3) Any memorial, copy of rules, or other document by this Act required to be registered may, if duly verified, be registered in the office of the Registrar-General in the manner prescribed by regulations under the [Conveyancing Act 1919](#).
- (4) The rules of the body corporate may be proved by the production of the copies which have been registered or a copy thereof certified by the Registrar-General or a Deputy Registrar-General.

## **12 Irregularity of appointment not to invalidate acts**

- (1) No irregularity, informality, or illegality in the appointment of any trustee or officer of the body corporate shall be taken or construed to render illegal or invalid any act, deed, matter, or thing done or executed or suffered to be done or executed by such trustee or officer in pursuance of such appointment.
- (2) Any such appointment may in such way as may be provided for in the rules for the time being of the body corporate be determined to be good or bad, and, if bad, the vacancy may be supplied in such way as may be provided for in such rules.
- (3) The provision of the said rules for the time being as to the validity of any such appointment, and the acts, deeds, and things done by any trustee, member, or officer in pursuance of any such appointment shall have the force and effect of law.

## **13 Contracts**

Contracts on behalf of the body corporate may be made as follows, that is to say:

- (a) Any contract which if made between private persons would be by law required to be in writing and under seal may be made on behalf of the body corporate under the common seal of the body corporate, and such contract may be in the same manner varied or discharged.
- (b) Any contract which if made between private persons would be by law required to be in writing and signed by the party to be charged therewith may be made on behalf of the body corporate in writing signed by any person acting under the express or implied authority of the body corporate, and such contract may be in the same



manner varied or discharged.

- (c) Any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the body corporate by any person acting under the express or implied authority of the body corporate, and such contract may in the same manner be varied or discharged.
- (d) All contracts made according to the provisions herein contained shall be effectual in law and shall be binding upon the body corporate and its successors and all other parties thereto their heirs, executors, or administrators as the case may be.

#### **14 Seal**

- (1) It shall be lawful for the trustees of the body corporate to design and from time to time to change or alter the common seal of the body corporate.
- (2) The common seal shall be in the custody of the chairman and one other member of the trustees, and the majority of the trustees present at any duly constituted meeting of the trustees shall have the power to use or direct the use of such seal for all purposes requiring to be evidenced by the common seal of the body corporate.
- (3) The fixing of the common seal to any document to which it is necessary to affix the seal of the body corporate shall not be complete without the signatures of two trustees or one trustee and the secretary.

#### **15 Officers**

It shall be lawful for the trustees of the body corporate to appoint such officers and servants, including a secretary and treasurer of the body corporate, and at such remunerations as they may think fit, and notice to or service upon the secretary of the body corporate in his official capacity shall be deemed to be a notice to or service upon the body corporate, and the receipt of the treasurer or other officer duly appointed for that purpose shall be a good discharge.

#### **16 Annual report**

- (1) The trustees shall once in each year or within such times as the Governor may appoint prepare a report of the activities of the body corporate, together with a balance-sheet and statement of its financial position.
- (2) The said balance-sheet and statement shall be audited, and when audited shall, together with the said report, be presented to the Minister of Agriculture.

#### **17 Rights of members**

No member of the body corporate shall be entitled to any interest whatever in the profits of the body corporate except by way of remuneration, or to any share in the assets of the body corporate on a dissolution or sale thereof; but all the profits of the body corporate,

except as aforesaid, shall be applied to further the objects of the body corporate, and all the assets of the body corporate shall be applied at the discretion of the trustees in furthering the objects for which the body corporate was established.

## **18 Remuneration of trustees**

- (1) The Governor may from time to time fix the total amount of the fees by which the trustees are to be remunerated each year, such amount to be paid out of the funds of the body corporate; but in the event of the total amount of such fees not being so fixed, the trustees shall, except as hereinafter provided, be entitled to be paid out of the funds of the body corporate in respect of their services as trustees, or otherwise, but so that the total amount to be paid to the whole of the trustees as remuneration in any one year shall not exceed the sum of seven hundred dollars.
- (2) The remuneration payable under this section shall be distributed in such proportion and manner as the trustees may deem advisable.
- (3) No remuneration shall be payable under this section to any trustee who is a public servant.