

# Agricultural Scientific Collections Trust Act 1983 No 148

[1983-148]



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.

### Authorisation

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# Agricultural Scientific Collections Trust Act 1983 No 148



New South Wales

An Act to constitute the Agricultural Scientific Collections Trust and to define its functions.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Agricultural Scientific Collections Trust Act 1983*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 (Repealed)

### 4 Definitions

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

**Chief Curator** means the person employed in the Public Service as the Chief Curator.

**Department** means Regional NSW.

**Fund** means the Agricultural Scientific Collections Fund referred to in section 15 (1).

**regulation** means a regulation made under this Act.

**Trust** means the Agricultural Scientific Collections Trust constituted by section 5.

**trust property** means property vested in the Trust by or pursuant to this Act.

**trustee** means a trustee referred to in section 6 (1).

- (2) In this Act, a reference to—

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

## **Part 2 The Agricultural Scientific Collections Trust**

### **5 Constitution of Trust**

- (1) There is hereby constituted a corporation with the corporate name “Agricultural Scientific Collections Trust”.
- (2) The Trust shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) In the exercise of its functions, the Trust shall be subject to the control and direction of the Minister.
- (4) The Trust shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown.

### **6 Appointment of trustees and procedure**

- (1) The Trust shall consist of 6 trustees who shall be appointed under this section by the Minister.
- (2) Schedule 1 has effect.

### **7 Principal objects of the Trust**

The principal objects of the Trust are—

- (a) to hold property which relates to the study of agriculture, fishing activities, forestry or mining and is of scientific or historical significance,
- (b) to maintain and improve trust property,
- (c) to increase and disseminate knowledge in relation to agriculture, fishing activities, forestry and mining which are related to trust property, and
- (d) without limiting the generality of paragraph (c), to increase and disseminate knowledge with respect to Australian plant pathogens, other micro-organisms, insects and mites.

### **8 Powers of the Trust**

- (1) The Trust may—
  - (a) permit the use of trust property for activities of a scientific or an educational nature, whether within or outside the State,

- (b) in pursuance of its objects, procure specimens and obtain scientific data from within or outside the State,
  - (c) provide scientific information to the public and to any scientific body, whether within or outside the State, and
  - (d) determine the places at which trust property is to be kept.
- (2) Subject to this Act and the regulations, the Trust shall have the control and management of all property vested in the Trust.
  - (3) The Trust may, with the consent of the Minister, agree to any condition that is not inconsistent with its objects being imposed on its acquisition of any property.
  - (4) Where, by gift inter vivos, devise or bequest, the Trust acquires property, it may retain the property in the form in which it is acquired, subject to any condition agreed to by the Trust under subsection (3) in relation to the property.
  - (5) The rule of law against remoteness of vesting does not apply to a condition to which the Trust has agreed under subsection (3).
  - (6) The *Stamp Duties Act 1920* does not apply to or in respect of any gift inter vivos, devise or bequest made or to be made to the Trust.
  - (7) The Trust may establish such committees as it thinks fit for the purpose of assisting it to exercise its functions.
  - (8) A person may be appointed to a committee whether or not the person is a trustee.
  - (9) Subject to this Act and the regulations, the Trust shall have such functions, in addition to those specified elsewhere in this Act, as are reasonably necessary for the attainment of its objects.

## 9 Dealings with certain property

- (1) In this section, **condition** means a condition to which the Trust has agreed under section 8 (3).
- (2) The Trust shall not sell, mortgage, demise or otherwise dispose of any property acquired by gift inter vivos, devise or bequest or any real property otherwise acquired, except—
  - (a) where the property was acquired without any condition—
    - (i) in the case of real property, with the approval of the Governor, or
    - (ii) in the case of other property, with the approval of the Minister,which approval may be given in respect of any case or class of cases, or

- (b) where the property was acquired subject to a condition—in accordance with the condition or section 10.

## **10 Disposal of certain property**

- (1) Subject to subsection (2), where the Trust resolves that any property that has been acquired by the Trust subject to a condition to which the Trust has agreed under section 8 (3) is not required for the purposes of the Trust, the Trust may—
  - (a) sell the property and retain the proceeds of the sale as property of the Trust,
  - (b) exchange the property for other property,
  - (c) give the property to a scientific institution, an educational institution or a statutory body or for the purposes of a Government Department, or
  - (d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration,notwithstanding the condition subject to which the property was acquired.
- (2) The Trust shall not—
  - (a) sell or exchange any property under subsection (1) (a) or (b), or give or dispose of any real property under subsection (1) (c) or (d), except with the consent of the Governor, or
  - (b) give or dispose of any property, other than real property, under subsection (1) (c) or (d), except with the consent of the Minister,and in accordance with any condition the Governor or the Minister, as the case may be, may impose upon the grant of that consent.
- (3) The Governor may consent to the sale, exchange, gift or disposal, and the Minister may consent to the gift or disposal, of property for the purposes of this section and may impose any condition upon the grant of consent.

## **11 Vesting of certain property**

- (1) The Minister may direct in writing that any collection which—
  - (a) is vested in the Crown and subject to the control and direction of the Minister,
  - (b) in the opinion of the Minister, relates to the study of agriculture, fishing activities, forestry or mining and is of scientific or historical significance, and
  - (c) is described in the direction,shall cease so to vest and shall vest in the Trust.

- (2) Where the Minister gives a direction in accordance with subsection (1), the property described in the direction shall cease to vest in the Crown and, without any further conveyance or transfer, shall vest in the Trust.

## **Part 3 Administration**

### **12 Staff**

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Trust to exercise its functions.

**Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Trust makes use of) may be referred to as officers or employees, or members of staff, of the Trust. Section 47A of the [Constitution Act 1902](#) precludes the Trust from employing staff.

### **13 Chief Curator**

- (1) The Chief Curator is responsible for the administration and management of trust property and for any services provided in conjunction therewith.
- (2) The Chief Curator is, in the exercise of the functions of the Chief Curator under this Act, subject to the control and direction of the Trust.

### **14 Delegation by the Trust**

- (1) The Trust may, by instrument in writing, delegate to—

- (a) a trustee, or
- (b) a member of staff of the Trust (including the Chief Curator),
- (c) (Repealed)

the exercise of such of its functions (other than this power of delegation) as are specified in the instrument of delegation and may, by a like instrument, revoke wholly or partly any such delegation.

- (2) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as are specified in the instrument of delegation.
- (3) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (4) Notwithstanding any delegation under this section, the Trust may continue to exercise all or any of the functions delegated.
- (5) Any act or thing done or suffered by a delegate under this section has the same force



and effect as if the act or thing had been done or suffered by the Trust and shall be deemed to have been done or suffered by the Trust.

- (6) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the Trust shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Trust and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Trust.

## **Part 4 Finance**

### **15 Agricultural Scientific Collections Fund**

- (1) There shall be established in the Special Deposits Account in the Treasury a fund to be called the "Agricultural Scientific Collections Fund".
- (2) There shall be paid to the credit of the Fund any money provided by Parliament for the purposes of the Trust and all money received in connection with the administration of this Act by the Trust.
- (3) The Fund may be applied by the Trust, with the consent of the Minister, towards the purchase of specimens and other requirements of the Trust.

### **16 Financial year**

The financial year of the Trust shall be the year commencing on 1 July.

### **17 Accounts**

- (1) The Trust shall cause to be kept proper accounts and records in relation to all of its operations.
- (2) The Trust shall, as soon as practicable, but within 6 months, after the end of each financial year of the Trust, prepare and submit to the Minister for presentation to Parliament a statement of accounts, together with the Auditor-General's certificate given under this section in relation to the statement.
- (3) The statement of accounts shall be in a form approved by the Auditor-General (having regard to current accounting standards and practices relating to such organisations as the Trust), shall include such information as the Auditor-General has requested and shall exhibit a true and fair view of the financial position and transactions of the Trust.
- (4) The Trust shall, as soon as practicable, but within 4 months, after the end of the financial year to which a statement of accounts relates, transmit the statement to the Auditor-General for verification and certification.
- (5) (Repealed)

(6) Nothing in this section prevents the alteration of the statement of accounts, with the approval of the Auditor-General, after its receipt by the Auditor-General and before its submission to the Minister.

(7) (Repealed)

## **18 (Repealed)**

## **Part 5 Miscellaneous**

### **19 Unauthorised removal of trust property**

A person shall not remove trust property—

(a) from a place at which the Trust has determined it shall be kept, or

(b) from the custody of the Trust,

unless authorised by the Trust so to do.

Maximum penalty—20 penalty units.

### **20 Damage to trust property**

A person shall not damage or destroy trust property unless authorised by the Trust so to do.

Maximum penalty—20 penalty units.

### **21 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

(a) the meetings of the Trust,

(b) the committees of the Trust,

(c) the use of property or services provided by the Trust,

(d) the methods to be used in the care of trust property, and

(e) the determination and payment of fees for—

(i) the use or purchase of any written material that is the property of the Trust,

(ii) the use of any other property or services provided by the Trust, and

(iii) such other matters as the Trust may, from time to time, determine.

- (2) A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,
- or may do any combination of those things.
- (3) A regulation may impose a penalty not exceeding 5 penalty units for any breach of a regulation.

## **22 Proceedings for offences**

Proceedings for an offence against this Act or the regulations may be disposed of summarily before the Local Court.

## **23 Vesting and transitional provisions**

Schedule 2 has effect.

## **24 (Repealed)**

# **Schedule 1 Provisions relating to trustees, committee members and procedure of the Trust**

(Section 6 (2))

## **1 Definitions**

In this Schedule, **prescribed person** means—

- (a) a trustee,
- (b) a person acting in the office of a trustee pursuant to clause 4 (1), or
- (c) a member of a committee established under section 8 (7).

## **2 Term of office**

Subject to this Schedule, a trustee shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the trustee, but is eligible for re-appointment.

## **3 Effect of certain other Acts**

- (1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to the office of a prescribed

person.

- (2) Where by or under any other Act provision is made requiring a person who is the holder of an office specified therein to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of a prescribed person or from accepting and retaining any remuneration payable to the person under this Act as a prescribed person.
- (3) The office of a prescribed person shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

#### **4 Acting trustees**

- (1) The Minister may, from time to time, appoint a person to act in the office of a trustee during the illness or absence of the trustee, and the person, while so acting, shall have and may exercise all the functions of the trustee.
- (2) The Minister may remove any person from the office to which the person was appointed under subclause (1).
- (3) For the purposes of this clause a vacancy in the office of a trustee shall be deemed to be an absence from office of the trustee.

#### **5 Allowances etc**

A prescribed person shall, if the Minister thinks fit, be paid—

- (a) if the person is a Public Service employee (other than a person employed in the Department)—such travelling and subsistence allowances, and
- (b) if the person is not a Public Service employee—such remuneration (including travelling and subsistence allowances),

as the Minister may from time to time determine in respect of the person.

#### **6 Removal from office**

The Minister may remove a trustee from office.

#### **7 Vacation of office**

A trustee shall be deemed to have vacated office if the trustee—

- (a) resigns the office by instrument in writing addressed to the Minister,
- (b) absents himself or herself from 3 consecutive ordinary meetings of the Trust of which notice has been given to the trustee personally or in the ordinary course of post and is

not before the expiration of 6 weeks after the latest of those meetings excused by the Trust for being absent from the meetings, unless the absence is occasioned by illness or other unavoidable cause, or

(c) is removed from office by the Minister under clause 6.

## **8 Chairman**

- (1) For the purposes of this clause, a trustee shall not be considered to have ceased to be a trustee by reason only of his or her term of office as a trustee having expired if the trustee is re-appointed by the Minister as a trustee for a term commencing immediately after the date on which that term of office expires.
- (2) The Chairman of the Trust shall be such trustee as the Minister nominates in writing as Chairman.
- (3) A Chairman holds office until the nomination of his or her successor under this clause or until he or she ceases to be a trustee, whichever first occurs.
- (4) At a meeting of the Trust—
  - (a) the Chairman, or
  - (b) in the absence of the Chairman or if it is a meeting held when no person holds the office of Chairman—a chairman elected by trustees present at the meeting from among their number,shall preside.

## **9 Procedure, generally**

- (1) In this clause, a reference to a trustee includes a reference to a person acting in the office of a trustee pursuant to clause 4 (1).
- (2) The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings shall, subject to this Schedule and any regulation, be as determined by the Trust.
- (3) The Minister shall call the first meeting of the Trust by giving notice to the trustees in such manner as the Minister thinks fit.
- (4) Four trustees shall form a quorum and any duly convened meeting of the Trust at which a quorum is present shall be competent to transact any business of the Trust and shall have and may exercise all the functions of the Trust.
- (5) The person presiding at a meeting of the Trust shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.
- (6) A decision supported by a majority of the votes cast by the trustees present and

voting at a meeting of the Trust at which a quorum is present shall be the decision of the Trust.

## **10 Minutes of meetings**

The secretary to the Trust shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Trust.

## **Schedule 2 Vesting and transitional provisions**

(Section 23)

### **1 Definition**

In this Schedule, **commencement** means the commencement of this Schedule.

### **2 Vesting of certain property**

On the commencement—

- (a) the collections of specimens, documents and other articles known as the Biology Branch Herbarium and the Entomology Branch Insect and Mite Collection of the Department of Agriculture (wherever housed) which, immediately before the commencement, were vested in the Crown and subject to the control and direction of the Minister,
- (b) any display cases, equipment and materials used in connection therewith,
- (c) all rights and interests therein, and
- (d) all control and management thereof,

shall vest in the Trust.

### **3 Agreement to certain conditions**

Where any property—

- (a) was, before the commencement, acquired by the Crown for use in connection with, or for the purposes of, the collections referred to in clause 2 (a) by gift inter vivos, devise or bequest, subject to a condition agreed to by the Crown, and
- (b) was held by the Crown for use in connection with the collections referred to in clause 2 (a) immediately before the commencement,

the Trust shall, on the commencement, be deemed to have agreed, under section 8 (3), to the condition subject to which the property was acquired.