
**NATIONAL TRUST OF AUSTRALIA (TASMANIA) ACT
1975**

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NATIONAL TRUST OF AUSTRALIA (TASMANIA)

No. 45 of 1975

AN ACT to establish a body corporate to be known as the National Trust of Australia (Tasmania), to provide for the constitution and define the functions of that body, to provide for the transfer to that body of the assets and liabilities of an existing company of that name, to provide for the dissolution of that company, and to make provision for incidental and consequential matters.

[1 October 1975]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—(1) This Act may be cited as the *National Trust of Australia (Tasmania) Act 1975*. Short title and commencement.

(2) This Act shall commence on a date to be fixed by proclamation.

Interpretation.

2 In this Act, unless the contrary intention appears—

“casual vacancy”, used in relation to an office, means a vacancy in that office resulting from the death of the holder or his ceasing to hold that office otherwise than by reason of the effluxion of time;

“Chairman” means the Chairman of the Council;

“Council” means the Council of the Trust;

“councillor” means a member of the Council;

“Executive” means the Executive of the Trust;

“existing company” means the company registered under the *Companies Act 1962* with the name National Trust of Australia (Tasmania);

“member” means a member of the Trust;

“President” means the President of the Trust;

“region” means a region referred to in section 4 (6);

“rules” means rules made under section 11;

“Secretary” means the Secretary of the Trust;

“statutory office” means the office of President, Chairman, Secretary, or Treasurer;

“Treasurer” means the Treasurer of the Trust;

“Trust” means the National Trust of Australia (Tasmania) established under this Act.

PART II

CONSTITUTION AND FUNCTIONS OF THE TRUST

3—(1) There shall be established a body to be known as the National Trust of Australia (Tasmania).

(2) The Trust shall be a body corporate with perpetual succession and a common seal.

(3) The Trust—

(a) may purchase, take on lease, hold, mortgage, exchange, and dispose of real property; and

(b) may purchase, take on hire, hold, mortgage, charge, exchange, and dispose of personal property,

for the purposes of, and subject to, this Act.

(4) The Trust is established with the objects of—

- (a) promoting or ensuring the preservation and maintenance for the public benefit of places and objects of beauty or having an historical, scientific, artistic, or architectural interest;
- (b) encouraging and promoting, among the public, knowledge of, interest in, and respect for those places and objects; and
- (c) promoting or ensuring the provision and maintenance of amenities and services to facilitate the enjoyment by the public of any such places or objects.

(5) References in subsection (4) to places shall be construed as including references to lands and to buildings, structures, and other works.

(6) The Trust may take such measures as seem to it appropriate in the furtherance in this State of the objects referred to in subsection (4) or in assistance to any other organization in the furtherance of those objects elsewhere.

4—(1) The members of the Trust shall be such persons (being individuals) as, in accordance with the rules, have been admitted as, and remain, members thereof. Constitution of the Trust.

(2) The rules may provide for different classes or types of members.

(3) There shall be a Council of the Trust that, subject to this Act, may, on behalf of the Trust, exercise all the functions vested in the Trust by this Act or otherwise.

(4) There shall be an Executive of the Trust.

(5) The Council may delegate to the Executive, subject to such conditions and restrictions as it may determine, the exercise of any of the functions exercisable by the Council; but the delegation of the exercise of any function to the Executive does not prevent the Council itself exercising that function.

(6) For the purposes of this Act, the State shall be divided into 3 regions as prescribed by the rules, one of those regions including the city of Hobart, one the city of Launceston, and one the town of Burnie or the town of Devonport or both of those towns.

(7) References in subsection (6) to a city or town shall be construed as references to the area of that city or town as it was constituted immediately before the passing of this Act.

The Council
of the Trust.

5—(1) The Council shall consist of 63 members and there shall be an equal number of councillors for each region.

(2) A councillor for a region shall be a member elected by members resident in that region from among their number, but where a casual vacancy occurs in the office of councillor for a region the councillors for that region may appoint a member resident in that region to fill the vacancy.

(3) Unless he sooner dies or otherwise ceases to hold office, a councillor holds office for a term of 3 consecutive years but, where a casual vacancy occurs in the office of councillor, the councillor elected or appointed to fill that vacancy ceases to hold office at the expiration of the unexpired term of office of the councillor in whose place he is elected or appointed.

(4) No person shall be elected or appointed a councillor unless he has attained the age of 18 years.

(5) A councillor may resign from his office by notice in writing served on the Secretary.

(6) The Council may remove from office any councillor if—

- (a) the Council is satisfied that he has become incapable of properly performing his duties as a councillor;
- (b) the Council is satisfied that he has misconducted himself in the performance of the duties of his office;
- (c) he has applied to take, or takes, advantage of any law relating to bankruptcy, or has compounded, or entered into an arrangement, with his creditors;
- (d) he has been convicted (whether in this State or elsewhere) of an offence of such a nature that, in the opinion of the Council, renders it improper for him to continue to be a councillor;
- (e) without leave of the Council, he has been absent from 3 or more consecutive meetings of the Council; or
- (f) he has ceased to reside in the region for which he is a councillor.

(7) References in this section to a year shall be construed as references to the period commencing at the conclusion of an annual general meeting of the members of the Trust and ending at the conclusion of the next annual general meeting of the members of the Trust.

6—(1) The Executive shall consist of the President and such number of other members (being a number divisible by 3) as may be prescribed by the rules or, if no number is so prescribed, 12 other members. The Executive of the Trust.

(2) Excluding the President, there shall be an equal number of members of the Executive for each region.

(3) A member of the Executive for a region shall be elected by the councillors for that region from among their number.

(4) A member of the Executive, unless he sooner dies or otherwise ceases to hold office, holds office for a term of one year, but where a casual vacancy occurs in the office of a member of the Executive, the person elected to fill that vacancy ceases to hold office at the expiration of the unexpired term of office of the member of the Executive in whose place he is elected.

(5) A member of the Executive may resign from his office by notice in writing served on the Secretary.

(6) A member of the Executive ceases to hold office if he ceases to be a councillor otherwise than by reason of the effluxion of time.

(7) Subsections (4), (5), and (6) do not apply to the President.

(8) References in this section to a year shall be construed as references to the period commencing at the conclusion of the first meeting of the Council held after an annual general meeting of the members of the Trust and ending at the conclusion of the first meeting of the Council held after the next annual general meeting of the members of the Trust.

7—(1) There shall be a President of the Trust appointed by the Council. The officers of the Trust.

(2) No person shall be appointed President unless he is a councillor and the President ceases to hold office if he ceases to be a councillor otherwise than by reason of the effluxion of time.

(3) There shall be a Secretary of the Trust and a Treasurer of the Trust who shall be members of the Trust appointed to their respective offices by the Council.

(4) The Council may appoint a Chairman of the Council, but no person shall hold that office unless he is a member of the Executive.

(5) No person shall at any one time hold more than one of the statutory offices, except that a person may, at the same time, hold both the office of President and that of Chairman.

(6) The holder of a statutory office, unless he sooner dies or otherwise ceases to hold that office, holds office for a term of one year, but where a casual vacancy occurs in a statutory office, the person appointed to fill that vacancy ceases to hold office at the expiration of the unexpired term of office of the officer in whose place he is appointed.

(7) The Secretary may resign his office by notice in writing served on the President, and the holder of any other statutory office may resign his office by notice in writing served on the Secretary.

(8) The Council may, on the recommendation of the Executive, remove the holder of a statutory office from his office.

(9) In this section, the expression " year " has the same meaning as it has for the purposes of section 6.

Patrons of the Trust.

8—(1) At the request of the Trust a person may become a patron of the Trust and a person becoming a patron of the Trust remains such as long as he desires to extend his patronage to the Trust.

(2) No request shall be made under this section except in pursuance of a resolution in that behalf passed at a general meeting of the members of the Trust.

(3) A patron is entitled to attend and speak at any general meeting of members of the Trust, but is not entitled as such to vote on any matter before the meeting.

Proceedings of the Executive, Council, &c.

9—(1) The President may, if he so desires, preside at any meeting of the Council or the Executive at which he is present.

(2) The Chairman shall preside at each meeting of the Council and the Executive at which he is present unless, in accordance with subsection (1), the President presides at the meeting.

(3) Subject to the foregoing provisions of this section, the person presiding at a meeting of the Executive or of the Council shall be such member thereof as the members present may choose.

(4) The person presiding at a meeting of the Executive shall not vote on any matter before the meeting unless there is an equality of votes on that matter among the other members present at the meeting, and, in the event of such an equality, he may give a casting vote.

(5) The person presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes on any matter before the meeting, he may give a second or casting vote.

10 An annual general meeting of the members of the Trust shall be held in accordance with the provisions made in that behalf in the rules. Annual general meeting of the Trust.

11—(1) Rules may be made for any purpose for which they may be made under any provision of this Act and generally for the regulation of the affairs, business, and management of the Trust and, without prejudice to the generality of the foregoing provisions of this subsection, any such rules may make provision for or with respect to all or any of the following matters, namely:— Rules of the Trust.

- (a) The holding and conduct of meetings of the members of the Trust, the Council, and the Executive, including the quorum of any such meeting and the voting thereat (whether by post or by proxy or otherwise);
- (b) The election or appointment of the officers of the Trust, members of the Executive, and councillors;
- (c) The admission, resignation, and expulsion of members;
- (d) The subscriptions payable by, and the imposition of levies on, members and the recovery of any such subscriptions and levies;
- (e) The duties of the officers of the Trust; and
- (f) The establishment, functions, and operation of committees and other bodies for the purpose of the furtherance of the objects of the Trust.

(2) Rules under this section shall be made at a general meeting of the members of the Trust.

(3) Section 47 of the *Acts Interpretation Act* 1931 does not apply to rules made under this section and any such rules shall be deemed not to be statutory rules within the meaning of the *Rules Publication Act* 1953.

Common seal
of the Trust.

12—(1) The Council shall determine the form of the common seal of the Trust and it shall be kept in such manner as the Council determines.

(2) The common seal of the Trust shall not be used except upon the order of the Council, or, in a case where the Council has delegated to the Executive the power to authorize the use of the seal, upon the order of the Executive.

(3) The use of the common seal shall be attested by the signatures of at least two members of the Council or the Executive and by the signature of the Secretary or some other person authorized by the Council to attest the use of the common seal.

(4) Judicial notice shall be taken of the common seal of the Trust, and, where it is affixed to any instrument, it shall be presumed, unless the contrary is shown, that it was duly so affixed and attested.

PART III

SUPPLEMENTARY PROVISIONS WITH RESPECT TO THE FUNCTIONS OF THE TRUST

Prohibition on
payment of
dividends, &c.

13 No dividend, bonus, or other profit shall at any time be paid out of the income or property of the Trust to any member in his capacity as such.

Limitation on
borrowing.

14 The Trust shall not, without the approval of the Minister—
(a) borrow any money; or
(b) mortgage any property, or charge it with the repayment of a loan.

Investment of
funds.

15—(1) Subject to this Act, the funds of the Trust may be invested in any manner in which trustees are authorized by law to invest trust funds.

(2) Where any property is vested in the Trust otherwise than by way of purchase for valuable consideration, nothing in this section prevents the Trust from retaining the property in the form in which it became so vested.

(3) Nothing in this section prevents the Trust from carrying out the terms of any trust upon which any property is held by the Trust.

16—(1) The *Audit Act* 1918 applies in respect of the Trust as if the Executive were a public body within the meaning of that Act and the accounts of the Trust were the accounts of the Executive. Audit.

(2) For the purposes of the *Audit Act* 1918 the officers of the Trust shall be deemed to be officers of the Executive.

(3) Any liability arising under the *Audit Act* 1918 of the Executive to pay any sum shall be deemed a liability of the Trust.

17—(1) Before 30th September in each year the Trust shall cause to be submitted to the Minister— Annual report and accounts.

(a) a report on the operations of the Trust during the period of 12 months ending on the previous 30th June; and

(b) a copy of the accounts of the Trust for that period.

(2) The Minister shall lay before each House of Parliament a copy of any report or accounts submitted to him under this section.

18—(1) The Trust may accept a devise, bequest, or gift of any property. Gifts, &c.

(2) Any property accepted by the Trust may be accepted subject to any trust or condition the carrying out of which, or the compliance with which, would further the objects of the Trust.

(3) The rule of law against perpetuities does not apply to any trust or condition referred to in subsection (2) subject to which any property is accepted by the Trust.

19—(1) Where to do so would in the opinion of the Trust tend to the preservation of a building that is of special historic or architectural interest, or any part or feature of a building that is of such interest, any person having an estate in the land on which the building is situated may, by agreement with the Trust, enter into a covenant with the Trust restrictive of the user of that land. Restrictive covenants on buildings of special historical and architectural interest.

(2) Any covenant entered into by a person pursuant to subsection (1) is, subject to this section, enforceable against that person and any person deriving title under him in like manner and to the like extent as if that covenant were entered into by a fee simple owner for the benefit of adjacent land held by the Trust in fee simple that was capable of being benefited by the covenant and as if that adjacent land continued to be so held by the Trust.

(3) Subject to this section, the Trust may, at any time, by agreement with the person against whom a covenant entered into under this section is enforceable, discharge the covenant or may agree to a variation of the covenant.

(4) Subject to subsection (5), where the land subject to a covenant under this section is under the *Real Property Act 1862*, that Act and the Acts amending that Act have effect in relation to the covenant and the instrument creating it as if it were such a covenant as is referred to in section 27D of the *Real Property Act 1886* for the benefit of land not under that Act, and as if the Trust held an estate in fee simple in that land and was entitled wholly to discharge the covenant.

(5) Where a covenant is entered into under this section by the registered proprietor of a lease under the *Real Property Act 1862* in respect of which no certificate of title has been issued, the Recorder of Titles shall enter a notification of the instrument upon the memorandum of the lease burdened thereby.

(6) Where the land subject to a covenant under this section is not under the *Real Property Act 1862*, the covenant and any variation or discharge thereof shall be under seal and shall be deemed to be an instrument affecting that land within the meaning of that Act.

(7) A covenant entered into by a leaseholder under this section shall (unless the instrument creating it contains a provision to the contrary) remain in force so long as the covenantor or any person deriving title under him other than a *bona fide* purchaser for value of the legal estate without notice of the covenant remains in possession of the land to which the covenant relates.

(8) In this section, unless the contrary intention appears, "lease" includes an agreement for a lease and "leaseholder" includes a tenant under an agreement for a lease.

Charges.

20—(1) The Trust may make charges—

- (a) for entry on to any lands vested in the Trust or of which under this Act the Trust has the control or management; and
- (b) for the use of any conveniences, facilities, or services provided by the Trust.

(2) Nothing in this section shall be construed as limiting the powers of the Trust under any other provision of this Act.

21—(1) The Council may make by-laws with respect to the care, By-laws. control, and management of the lands vested in, or under the control or management of, the Trust and, without prejudice to the generality of the foregoing provisions of this subsection, any such by-laws may make provision with respect to—

- (a) the prevention of damage or injury to the lands or other things thereon;
- (b) the prohibition or control of the removal of any property or other things therefrom;
- (c) the preservation or protection of the fauna or flora of the lands, or of any living things kept thereon;
- (d) the prohibition or control of the bringing into, or over, or the use or possession in or over, the lands of any conveyance or thing (including a living thing);
- (e) the conduct of persons therein; and
- (f) the exclusion or ejection of persons from the lands or any part thereof.

(2) By-laws under this section—

- (a) may apply generally to the lands referred to in subsection (1), to any class or kind of those lands, or to any specified area of those lands; and
- (b) may impose penalties, not exceeding \$200, in respect of contraventions of the by-laws.

(3) By-laws made under this section shall be made under the common seal of the Trust and shall not have effect until they are confirmed by the Minister and published in the *Gazette*.

PART IV

PROVISIONS WITH RESPECT TO THE DISSOLUTION OF THE EXISTING COMPANY AND OTHER TRANSITIONAL MATTERS

22—(1) On the commencement of this Act all the property, rights, liabilities, and obligations of the existing company are without further assurance transferred to and vested in the Trust, and any functions of that company under any enactment are transferred to and become exercisable by the Trust. Dissolution of company and transfer of its assets and liabilities to the Trust.

(2) On the transference of the property, rights, liabilities, and obligations of the existing company pursuant to subsection (1) the company shall be deemed to have been dissolved and the Registrar

of Companies shall cause a note of that fact to be made in such manner as he considers appropriate in the registers kept by him for the purposes of the *Companies Act 1962*.

Continuance of
membership,
&c.

23—(1) On the commencement of this Act the following provisions have effect, namely:—

- (a) The persons who, immediately before that commencement, were members of the existing company, become members of the Trust;
- (b) Notwithstanding anything in Part II, the persons who, immediately before that commencement, were members of the Council of the existing company shall take office as councillors;
- (c) The Chairman of the company shall take office as President;
- (d) The persons who, immediately before that commencement, were secretary and treasurer of the company shall take office as Secretary and Treasurer respectively; and
- (e) The articles of association of the company have effect, subject to this Act, as the rules.

(2) Unless he sooner dies or otherwise ceases to hold office, a person who holds office as councillor pursuant to this section ceases to hold office at the conclusion of the first annual general meeting of the members of the Trust held after the commencement of this Act.

(3) Unless he sooner dies or otherwise ceases to hold office, a person who holds a statutory office pursuant to this section ceases to hold that office at the conclusion of the first meeting of the Council first elected in accordance with Part II.

(4) Where, before the first annual general meeting referred to in subsection (2), there is a casual vacancy in the office of councillor, or where, before the meeting referred to in subsection (3), there is a casual vacancy in a statutory office the Council may appoint a member to fill the vacancy, but no member may be appointed to the office of President under this subsection unless he is a councillor.

Term of office
of first
councillors.

24—(1) This section applies to the councillors for a region who would, apart from this section, cease to hold office at the expiration of a period of 3 years from the conclusion of the first annual general meeting of members of the Trust held after the commencement of this Act.

(2) In respect of each region, of the councillors to whom this section applies section 5 (3) has effect—

- (a) in relation to 7 of those councillors, as if the reference therein to a term of 3 consecutive years were a reference to a term of two consecutive years; and
- (b) in relation to 7 others of those councillors, as if that reference were a reference to a term of one year.

(3) Whether paragraph (a) or paragraph (b) of subsection (2), or neither, applies to any particular councillor for a region shall be determined by agreement between the councillors for that region or, if the President is of opinion that they cannot, or are unlikely to, reach agreement, by lot conducted in such manner as he determines.