

ENVIRONMENTAL RESTORATION AND REHABILITATION TRUST ACT 1990 No. 24

NEW SOUTH WALES



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SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE TRUST

**ENVIRONMENTAL RESTORATION AND REHABILITATION
TRUST ACT 1990 No. 24**

NEW SOUTH WALES



Act No. 24, 1990

An Act to constitute the Environmental Restoration and Rehabilitation Trust and define its functions; and for other purposes.
[Assented to 14 June 1990]

See also Environmental Research Trust Act 1990, Environmental Education Trust Act 1990.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Environmental Restoration and Rehabilitation Trust Act 1990.

Commencement

2 This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act

"Fund" means the Environmental Restoration and Rehabilitation Trust Fund established by this Act;

"Trust" means the Environmental Restoration and Rehabilitation Trust constituted by this Act.

(2) In this Act

(a) a reference to a function includes a reference to a power, authority and duty; and

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

PART 2 - ENVIRONMENTAL RESTORATION AND REHABILITATION TRUST

Constitution of the Trust

4 There is constituted by this Act a body corporate with the corporate name of the Environmental Restoration and Rehabilitation Trust.

Membership and procedure of the Trust

- 5. (1)** The Trust is to consist of 7 members.
- (2)** The members are to be:
- (a) the Minister administering the State Pollution Control Commission Act 1970, who is to be the Chairperson of the Trust; and
 - (b) the Minister administering the Environmental Planning and Assessment Act 1979; and
 - (c) the Chairman of the State Pollution Control Commission; and
 - (d) the Chairperson of the Water Board; and
 - (e) a person appointed by the Minister administering the State Pollution Control Commission Act 1970 from a panel of persons nominated by the Nature Conservation Council to represent the environmental community; and
 - (f) a person appointed by the Minister administering the State Pollution Control Commission Act 1970 to represent the manufacturing industry, and
 - (g) the Director of the Ministry for the Environment.
- (3)** Schedule 1 has effect with respect to the members and procedure of the Trust.

Object of the Trust

- 6.** The object of the Trust is to encourage and support restoration and rehabilitation projects in both the public and private sectors that will or are likely to reduce pollution, the waste-stream or environmental degradation, of any kind, within the geographical area of operations of the Water Board.

Functions of the Trust

- 7.** The Trust may for the purpose of promoting its object:
- (a) make grants (either unconditionally or subject to conditions) to individuals and organisations to be used for projects of a kind described in section 6; and
 - (b) supervise the expenditure of money so granted; and
 - (c) engage in such other activities as the Minister may approve; and
 - (d) expend money as authorised by section 14 (payment of costs of pollution clean-up).

Committees of the Trust

8. (1) The Trust is to establish a Technical Committee having the Director of the Ministry for the Environment as Chairperson and having no fewer than 5 and no more than 7 members.

(2) The Trust may establish other committees to assist it in connection with the exercise of any of its functions.

(3) The members of a committee need not be members of the Trust.

(4) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Trust or (subject to any determination of the Trust) by the committee.

PART 3 - GRANTS ETC.

Technical assessment of grant applications

9. (1) The Trust is to refer each application for a grant to the Technical Committee.

(2) The Technical Committee is to assess the practicability and overall worthiness of each application referred to it and provide the Trust with its assessment.

(3) A member of the Technical Committee may nominate another person to take the member's place in assessing a particular application if the member considers that the nature of the application requires the expertise of that other person.

Grants can be made only out of income of the Fund

10. Grants can be made only out of the income derived from investment of money in the Fund.

Limits on grants

11. (1) In any financial year of the Trust, no one grant is to exceed 10 per cent of the total income derived during the previous financial year from investment of money in the Fund.

(2) Each grant is to be made subject to a condition that the grant is to be expended within 2 years after it is made.

(3) If more than one grant is made to a particular individual or organisation in any financial year of the Trust, those grants together are to be considered to be one grant for the purposes of subsection (1).

(4) The Trust may waive the application of this section in a particular case if the Trust thinks special circumstances exist that justify its doing so.

(5) The Trust is to include details of any decision to waive the application of this section in its next annual report under the Annual Reports (Statutory Bodies) Act 1984.

Special grants from capital of the Fund

12. (1) The Trust may in a case which it considers is a special case waive the operation of sections 10 and 11 and make a grant out of any money in the Fund (not just the income from investments).

(2) The Trust can do so only by unanimous decision, that is, a decision supported unanimously at a meeting of the Trust at which all the members of the Trust are present and vote.

Tabling in Parliament of details of grants from capital

13. (1) The Minister is required to lay before each House of Parliament a copy of the minutes of a meeting of the Trust setting out the details of any decision to take action under section 12 made at the meeting and is required to do so within 14 sitting days after the decision is made.

(2) Either House of Parliament may pass a resolution disallowing a grant made under section 12

- (a)** at any time before the copy of the relevant minutes is laid before the House; or
- (b)** at any time after that copy is laid before the House, but only if notice of the resolution was given within 15 sitting days of the House after that copy was so laid.

(3) On the passing of a resolution disallowing a grant, the grant is to be repaid to the Trust and may be recovered by the Trust from the grantee as a debt in a court of competent jurisdiction.

Payment of costs of pollution clean-up

14. (1) The Trust may expend the income from investment of the Fund on measures for the removal, dispersal or mitigation of serious pollution when those measures need to be taken immediately.

(2) The Trust may not expend more than 20 per cent of the income from investment of the Fund in any financial year for that purpose.

(3) Any amount recovered by or on behalf of the Crown in respect of the cost of measures that have been paid for out of the Fund is to be paid into the Fund.

Recovery of grants

15. If a grant is made by the Trust subject to a condition and the grant or any part of the grant is not applied in accordance with the condition, the Trust may recover the whole or any part of it from the grantee as a debt in a court of competent jurisdiction

PART 4 - FINANCE

Environmental Restoration and Rehabilitation Trust Fund

16. (1) There is to be established in the Special Deposits Account in the Treasury an Environmental Restoration and Rehabilitation Trust Fund into which are to be paid:

- (a) 70 per cent of payments received by the Water Board that are payable on or after 1 January 1990 and before 1 July 2000 for the benefit of permissions relating to the discharge of trade waste into any service of the Board under regulations under the Water Board Act 1987; and
- (b) 100 per cent of payments of the kind referred to in paragraph (a) received by the Water Board that are payable on or after 1 July 2000; and
- (c) the proceeds of investment of money in the Fund; and
- (d) any gift or bequest of money to the Trust; and
- (e) such other money as may be paid to the Trust; and
- (f) such other money as may by law be required to be paid into the Fund or as may be appropriated by Parliament for payment into the Fund.

(2) Money in the Fund is under the control of the Trust and can be expended by the Trust for the purpose of the exercise of its functions as authorised by this Act and the costs incurred in administering this Act.

Investments

17. The Trust is to invest money in the Fund:

- (a) in the manner authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power on the Trust to invest the money, in any other manner approved by the Treasurer.

PART 5 - ADMINISTRATION

Staff of the Trust

18. (1) The Trust may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

(2) For the purposes of this Act, a person whose services are made use of under this section is an officer of the Trust.

Delegation by the Trust

19. The Trust may delegate to a member, to a committee of the Trust or to any officer of the Trust the exercise of any of its functions, other than this power of delegation

PART 6 - MISCELLANEOUS

Financial year of the Trust

20. The financial year of the Trust is the year commencing 1 July.

Proof of certain matters not required

21. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Trust; or
- (b) any resolution of the Trust; or
- (c) the appointment of, or the holding of office by, any member of the Trust; or
- (d) the presence of a quorum at any meeting of the Trust.

Regulations

22. 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.

Amendment of Public Finance and Audit Act 1983 No. 152, Sch. 2 (Statutory Bodies)

23. The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2 (in alphabetical order) the words "Environmental Restoration and Rehabilitation Trust".

SCHEDULE I - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE TRUST

(Sec. 5 (3))

Definitions

1. In this Schedule:

"**appointed member**" means a member referred to in section 5 (2) (e)
or (f);

"**member**" means a member of the Trust.

Nomination of panels for appointments as members

2. (1) If nominations to constitute a panel referred to in section 5 (2) (e) are not made within the time and in the manner directed by the Minister, the Minister may appoint a person to be a member instead of the person required to be appointed from the panel.

(2) A person so appointed is to be taken to have been duly nominated for appointment.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE TRUST - *continued***

Deputies of members

3. (1) A member (other than an appointed member) may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.

(2) The Minister administering the State Pollution Control Commission Act 1970 may, from time to time, appoint a person to be the deputy of a member referred to in section 5 (2) (e) or (f).

(3) In the absence of a member, the member's deputy

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be a member.

(4) This clause does not operate to confer on the deputy of a member who is Chairperson of the Trust the member's functions as Chairperson.

(5) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

4. Subject to this Schedule, an appointed 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.

Allowances

5. A member of the Trust or of a committee of the Trust (other than a Minister) may be paid such allowances as the Minister administering this Act from time to time determines in respect of the member.

Vacancy in office of appointed member

6. (1) The office of an appointed member becomes vacant if the member:

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE TRUST - *continued*

- (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 Governor, or
 - (d) is removed from office by the Governor under this clause; or
 - (e) is absent from 4 consecutive meetings of the Trust of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Trust or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Trust 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 temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove an appointed member from office at any time.

Filling of vacancy in office of member

7. If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a member.

SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE TRUST - *continued*

(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.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

Personal liability of members etc.

9. A matter or thing done by the Trust, a member of the Trust or any person acting under the direction of the Trust does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

General procedure

10. The procedure for the calling of meetings of the Trust and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Trust.

Quorum

11. The quorum for a meeting of the Trust is 4 members.

Presiding member

12. (1) The Chairperson of the Trust or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Trust.

(2) The person presiding at any meeting of the Trust has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**SCHEDULE 1 - PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE TRUST - *continued***

Voting

13. A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present is the decision of the Trust.

First meeting

14. The Minister is to call the first meeting of the Trust in such manner as the Minister thinks fit.

Special provision - administration of Acts

15. (1) If the same Minister administers the Acts referred to in section 5 (2) (a) and (b), that Minister can nominate an additional Minister to be a member of the Trust and the nomination has effect accordingly.

(2) If 2 or more Ministers administer an Act referred to in section 5 (2) (a) or(b), the Minister who is to be a member of the Trust is whichever of those Ministers is nominated by the Premier.

*[Minister's second reading speech made in -
Legislative Assembly on 15 May 1990
Legislative Council on 30 May 1990]*