

TASMANIA

NATIONAL TRUST BILL 2006

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SCHEDULE 1 – DIRECTORS AND MEETINGS OF BOARD

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NATIONAL TRUST BILL 2006

(Brought in by the Minister for Tourism, Arts and the Environment, the Honourable Paula Catherine Wriedt)

A BILL FOR

An Act to establish the National Trust of Australia (Tasmania) and for related purposes

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 1 – PRELIMINARY

1. Short title

This Act may be cited as the *National Trust Act 2006*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

“**Administrator**” means an Administrator appointed under section 43;

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Part 1 – Preliminary

“appointed director” means a person appointed as an appointed director under section 12(3) or section 13;

“Board” means the Board of Directors of the Trust;

“director” means the managing director, an appointed director or an elected director;

“elected director” means a person –

- (a) taken to be an elected director under section 12(4); or
- (b) elected as an elected director under section 13;

“initial Board” means the initial Board of Directors referred to in section 12;

“initial managing director” means the person appointed as the initial managing director under section 12;

“managing director” means the initial managing director or the person appointed as managing director under section 14;

“members of the Trust” has the meaning given by section 8;

“non-executive director” means a director other than the managing director;

“rules” means rules made and in force under section 42;

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“special resolution” means a resolution of the Board –

- (a) passed at a meeting of the Board of which not less than 21 days’ written notice, specifying the intention to propose the resolution as a special resolution, has been duly given to all directors of the Board; and
- (b) passed by a majority of not less than three-quarters of the directors of the Board present and entitled to vote at the meeting;

“Trust” means the National Trust of Australia (Tasmania) continued under section 4.

PART 2 – THE NATIONAL TRUST

4. Continuation of National Trust of Australia (Tasmania)

- (1) The National Trust of Australia (Tasmania), established under section 3 of the *National Trust of Australia (Tasmania) Act 1975*, is continued.
- (2) The Trust –
 - (a) is a body corporate with perpetual succession; and
 - (b) may sue and be sued in its corporate name.

5. Objects of Trust

- (1) The objects of the Trust are as follows:
 - (a) acquiring, promoting or ensuring the preservation and maintenance for the public benefit of places and objects of beauty or that have a historical, scientific, artistic, architectural or cultural interest;
 - (b) encouraging and promoting, among the public, knowledge of, interest in and respect for those places and objects;
 - (c) promoting or ensuring the provision and maintenance of amenities and services to

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facilitate the enjoyment by the public of those places or objects;

- (d) protecting and preserving the natural features of, and conserving the fauna and flora on, any place referred to in paragraph (a) and acquired by, or under the control of, the Trust;
- (e) encouraging and promoting public appreciation, knowledge and enjoyment of, respect for and interest in any land, buildings, works, structures or articles;
- (f) cooperating with the Crown or with any corporation, body or society, either within or outside Tasmania, having objects wholly or substantially similar to the objects of the Trust, in promoting the objects of the corporation, body or society or the Trust.

- (2) A reference in subsection (1) to a place includes a reference to lands and to buildings, structures and other works.

6. Powers of Trust

- (1) The Trust has power to do all things necessary or convenient to be done in connection with carrying out its objects.
- (2) Without limiting the generality of subsection (1), the Trust may –

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- (a) acquire, hold, dispose of and otherwise deal with property; and
- (b) borrow money either with or without security; and
- (c) enter into any contract, including a contract with another person for the performance of any of its functions or powers jointly with that other person; and
- (d) set charges, terms and conditions relating to work done, or services, goods or information supplied, by it; and
- (e) do all other things that a body corporate may do and that are necessary for, or incidental to, the carrying out, or promotion, of its objects.

7. Seal of Trust

- (1) The Trust has a seal.
- (2) The Board is to determine the form of the seal of the Trust and it is to be kept in such manner as the Board determines.
- (3) The seal of the Trust must not be used except on the order of the Board.
- (4) The use of the seal must be attested by the signatures of at least 2 members of the Board.

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- (5) Judicial notice is to be taken of the seal of the Trust and, where it is affixed to any instrument, it is presumed, unless the contrary is shown, that it was duly so affixed and attested.
 - (6) A document requiring authentication by the Trust may be sufficiently authenticated without the seal of the Trust if it is signed by the Chairperson of the Board or the managing director, or by any member of the staff of the Trust authorised to do so by the Chairperson or the managing director.

8. Members of Trust

- (1) The Trust is constituted by its members.
- (2) The members of the Trust are those persons, including an incorporated or unincorporated body of persons, who, in accordance with the rules, are financial members of the Trust.

9. Trust not Crown

The Trust –

- (a) is not the Crown; and
- (b) does not have any status, privilege or immunity of the Crown.

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Part 2 – The National Trust

10. Annual general meetings of Trust

- (1) The Board is to call an annual general meeting of members of the Trust in each calendar year for the following purposes:
 - (a) receiving the annual report and financial statements of the Trust from the Board;
 - (b) declaring the result of the election of directors and advising of the appointment of directors;
 - (c) performing other functions of the Trust which under this Act or the rules may be exercised only at an annual general meeting.
- (2) The annual general meeting is to be held in accordance with the rules not later than 4 months after the end of each financial year.
- (3) At least 21 days' notice of the annual general meeting of the Trust is to be given to members in accordance with the rules.

11. Special general meeting of Trust

- (1) A special general meeting of members of the Trust may be convened by the managing director in accordance with the rules on receipt of a request from at least 10% of the financial members of the Trust.

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- (2) At least 21 days' notice of a special general meeting of the Trust is to be given to members in accordance with the rules.

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Part 3 – Board of Directors of Trust

PART 3 – BOARD OF DIRECTORS OF TRUST

12. Initial Board of Directors

- (1) The initial Board of Directors of the Trust is to comprise –
 - (a) 6 persons appointed by the Minister as the non-executive directors, one of whom is to be appointed Chairperson; and
 - (b) one person as the initial managing director.
- (2) Of the 6 non-executive directors appointed by the Minister, 3 are taken to be elected directors.
- (3) Of the 3 directors who are not taken to be elected directors –
 - (a) one is to be appointed for a term of one year; and
 - (b) one is to be appointed for a term of 2 years; and
 - (c) one is to be appointed for a term of 3 years.
- (4) Of the 3 directors who are taken to be elected directors –
 - (a) one is taken to be elected for a term of one year; and
 - (b) one is taken to be elected for a term of 2 years; and

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- (c) one is taken to be elected for a term of 3 years.
 - (5) The initial managing director is to be the person who, immediately before the commencement of this Act, was the chief executive officer of the Trust appointed under the *National Trust of Australia (Tasmania) Act 1975*.
 - (6) The initial managing director is to be appointed for a term specified in the instrument of appointment.

13. Subsequent Boards and directors

- (1) On the expiration of each term of appointment referred to in section 12(3) and (4) respectively –
 - (a) the Minister is to appoint a person as an appointed director for a term of 3 years; and
 - (b) the Trust is to elect a person as an elected director for a term of 3 years.
- (2) The elected directors are to be elected in accordance with Schedule 1, the rules and the regulations.
- (3) Subject to subsections (4) and (5), a person who is a director may be appointed, reappointed, elected or re-elected under this section.
- (4) A person must not serve as a director for more than 2 consecutive terms.

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Part 3 – Board of Directors of Trust

- (5) A person who has served as a director for 2 consecutive terms must not again serve as a director until 2 years after the expiration of the second term.
- (6) Part 1 of Schedule 1 has effect with respect to directors and their appointment or election.

14. Managing director

- (1) On the expiration of the term of office of the initial managing director, the Board is to renew the appointment of the initial managing director or appoint a new managing director.
- (2) The day-to-day affairs of the Trust are to be managed by the managing director in accordance with the directions of the Board.
- (3) The *State Service Act 2000* does not apply to the managing director.
- (4) The managing director is entitled to be paid the remuneration and allowances specified in the instrument of appointment.
- (5) The managing director holds office –
 - (a) for as long as the Board considers appropriate; and
 - (b) on the conditions specified in the instrument of appointment.

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- (6) The appointment of a person as managing director is not invalid merely because of a defect or irregularity in relation to the appointment.
- (7) The appointment of a person as managing director may be revoked in accordance with the instrument of appointment.

15. Role of managing director

- (1) The managing director is responsible to the Board for the general administration and management of the Trust.
- (2) The managing director –
 - (a) must perform any functions, and may exercise any powers, delegated to the managing director by the Board; and
 - (b) must perform any other functions imposed on, and may exercise any other powers granted to, the managing director by this or any other Act.
- (3) The Board and managing director may enter into an agreement relating to the Board's expectations of the performance and exercise of the functions and powers of the managing director.
- (4) The agreement must not prevent the managing director from performing or exercising any function or power imposed on or given to the managing director by this or any other Act.

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Part 3 – Board of Directors of Trust

16. Directors to be elected if Trust self-sufficient

Notwithstanding section 13(1), if the Minister is satisfied that the Trust is financially self-sufficient and sustainable, the Minister is not to appoint a person as an appointed director and any vacancy in the office of a non-executive director is to be filled by the election of an elected director.

17. Meetings of Board

Part 2 of Schedule 1 has effect with respect to meetings of the Board.

18. Functions of Board

- (1) The Board has the control of the affairs of the Trust and has such other functions as may be prescribed or conferred or imposed on the Board by or under this or any other Act.
- (2) The Board is to perform its functions in accordance with any directions given by the Trust in general meeting as permitted by the rules.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Trust by the Board is to be taken to have been done by the Trust.

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19. Duties of directors

- (1) A director must act honestly in the performance and exercise of the functions and powers of a director.
- (2) A director or former director must not use improperly, whether in Tasmania or elsewhere, information acquired as a director –
 - (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
 - (b) to cause damage to the Trust.
- (3) A director or former director must not use improperly, whether in Tasmania or elsewhere, his or her position or former position as a director –
 - (a) to gain, directly or indirectly, a personal advantage or an advantage for another person; or
 - (b) to cause damage to the Trust.

20. Repayment by director of improper profit, &c.

If a director or former director is found guilty of an offence under section 19, the Trust may recover in a court of competent jurisdiction as a debt due to it –

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Part 3 – Board of Directors of Trust

- (a) any profit made by the director, former director or another person as a result of the commission of the offence; and
- (b) an amount equal to any loss and damage the Trust suffered as a result of the commission of the offence.

21. Delegation

The Board may, in writing, delegate any of its functions or powers other than this power of delegation, to the managing director.

22. Committees

- (1) The Board –
 - (a) must establish an audit committee; and
 - (b) may establish such other committees as it considers appropriate.
- (2) A committee –
 - (a) must provide the Board with advice on any matter referred to it by the Board; and
 - (b) must perform any function, and may exercise any powers, delegated to it by the Board.
- (3) In addition to its functions under subsection (2), the audit committee must provide the Board with

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advice on monitoring the Trust's systems of financial reporting, administrative practice and internal control.

- (4) Schedule 2 has effect with respect to –
- (a) the members of a committee; and
 - (b) the meetings of a committee.

23. Staff

- (1) The Trust may employ such persons as it considers necessary for the performance of its functions.
- (2) Subject to any relevant award or industrial agreement, the terms and conditions of employment are as determined by the Trust.
- (3) The *State Service Act 2000* does not apply to employees of the Trust.

**PART 4 – PROPERTY AND POWERS OF
INVESTMENT**

24. Interpretation of Part

In this Part –

“property” means real or personal property
and any estate or interest in real or
personal property;

“property transaction” means an action that
the Trust may take under section 27.

25. Gifts, &c.

- (1) The Trust may accept a devise, bequest or gift of any property.
- (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 of a kind referred to in subsection (2) and subject to which any property is accepted by the Trust.

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Part 4 – Property and Powers of Investment

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26. Property to be held subject to trust, &c.

The Trust is to hold any property vested in or held by it in accordance with the terms of any trust or condition affecting the property.

27. Power to dispose, &c., of property

The Trust may sell, lease, mortgage, charge or otherwise dispose of, deal with or encumber any property vested in the Trust but, in the case of any property affected by any trust or condition, may do so only –

- (a) in accordance with the terms of the trust or condition; or
- (b) as otherwise permitted by this Part.

28. Property transactions and variations of trusts

- (1) In relation to specified property vested in the Trust that the Board is satisfied on reasonable grounds is worth not more than \$50 000, the Board may effect a property transaction in relation to that property despite the terms of any trust or condition affecting the property.
- (2) In relation to specified property vested in the Trust that the Board is satisfied on reasonable grounds is worth more than \$50 000, if the Board determines by special resolution that it is necessary or expedient to do so to improve the ability of the Trust to achieve or promote its

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Part 4 – Property and Powers of Investment

objects generally, the Trust may apply to the appropriate authority for –

- (a) permission to effect a particular property transaction in relation to that property, despite the terms of any trust or condition affecting the property; or
 - (b) a variation of the terms of any trust or condition affecting that property.
- (3) The appropriate authority is –
 - (a) the Attorney-General, in respect of property that the Board is satisfied on reasonable grounds is worth less than \$500 000; or
 - (b) the Supreme Court, in respect of any other property.
- (4) The Attorney-General may decline to deal with an application, in which case the Supreme Court is the appropriate authority for the application.
- (5) The appropriate authority may grant an application under this section only if satisfied that the proposed action is just and equitable, taking into account –
 - (a) the Trust's ability to achieve or promote its objects generally, having regard to its current and prospective financial position; and

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Part 4 – Property and Powers of Investment

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- (b) any evident intentions of the settlor or donor in creating the trust or imposing the condition.
 - (6) On the granting of an application under this section –
 - (a) the Trust is authorised to effect the property transaction concerned (despite the terms of any trust or condition affecting the property); or
 - (b) the terms of the trust or condition are varied –
- as specified in the grant of the application.

29. Proceeds of property transactions

The proceeds of a property transaction effected by the Trust are to be held and applied for the achievement and promotion of the objects of the Trust.

30. Protection of persons involved in property transactions

- (1) Any property sold or otherwise disposed of by way of a property transaction purporting to have been effected under this Part vests in the person acquiring the property freed and discharged from any trust or condition –

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Part 4 – Property and Powers of Investment

- (a) that relates to the sale or disposition of the property or to the use of the property; and
 - (b) to which the property was subject in the hands of the Trust.
- (2) A person so acquiring property from the Trust need not be concerned to inquire whether circumstances have arisen to authorise the sale or other disposition or whether the power was otherwise properly and regularly exercised or to see to the application of any consideration paid to the Trust.

31. Occupation of Trust properties by members

The Trust may permit a member of the Trust to occupy (whether under lease or licence or otherwise) any property or part of property vested in or held by the Trust for less than market consideration but only if the Board has determined by special resolution that the occupation should be permitted and is justified on the basis of services provided by the person to the Trust.

32. Property register

- (1) The Board is to prepare and maintain a register showing details of –
 - (a) all property vested in or held by the Trust; and

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Part 4 – Property and Powers of Investment

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(b) the current use of that property.

- (2) The register, insofar as it relates to real property, is to be available for inspection by any person free of charge at the principal office of the Trust during normal business hours.

33. Investments

The Trust may invest its funds in any manner in which trustees may by law invest trust funds.

34. Prohibition on dividends, bonuses, &c.

No dividend, bonus or other profit is at any time to be paid out of the income or property of the Trust to any member of the Trust or director.

35. Power of Trust to act as trustee

The Trust may act as trustee of any place or object referred to in section 5(1)(a), if appointed so to act by any person (including the Crown) entitled to appoint such trustees.

36. Power of Trust to lend money and articles

Subject to the terms of any trust or condition affecting any money or article of the Trust, the Trust may, for the purpose of promoting the objects of the Trust, or of any corporation, body

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Part 4 – Property and Powers of Investment

or society, either within or outside Tasmania, having objects wholly or substantially similar to the objects of the Trust, lend to it that money or article.

PART 5 – ADDITIONAL PROVISIONS RELATING TO TRUST

37. Annual report

- (1) The Board, not later than 31 October in each year, is to prepare a report of its operations in respect of the preceding financial year.
- (2) A report under subsection (1) is to include –
 - (a) the financial statements of the Trust for the financial year to which the report relates; and
 - (b) a copy of the auditor's report with respect to those financial statements.

38. Application of *Government Business Enterprises Act 1995*

Part 5 of the *Government Business Enterprises Act 1995* applies to the Trust as if it were a government business enterprise within the meaning of that Act.

39. Audit

- (1) The Trust is to keep proper accounts and records in relation to all its financial affairs and activities and, as soon as practicable after 1 July and not later than 31 October in each year, is to prepare financial statements exhibiting a true and correct

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Part 5 – Additional Provisions Relating to Trust

record of its financial position and transactions in respect of the preceding financial year.

- (2) The accounts of the Trust kept for the purposes of this Act are subject to the *Financial Management and Audit Act 1990*.

40. Charges

- (1) The Trust may charge –
- (a) for entry onto any land or building vested in the Trust or of which, under this Act, the Trust has the control or management; and
 - (b) for the use of any convenience, facility or service provided by the Trust.
- (2) Nothing in this section is to be construed as limiting the powers of the Trust under any other provision of this Act.

41. By-laws

- (1) The Board may make by-laws with respect to the care, control and management of any property vested in, or under the control or management of, the Trust.
- (2) Without prejudice to the generality of subsection (1), the by-laws may make provision with respect to –

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- (a) the prevention of damage or injury to any property referred to in subsection (1) or any thing on or in that property; and
 - (b) the prohibition or control of the removal of any thing from that property; and
 - (c) the preservation or protection of the fauna or flora of the property or of any living thing kept on or in that property; and
 - (d) the prohibition or control of the bringing into, or over, or the use or possession in or over, that property of any conveyance or thing (including a living thing); and
 - (e) the conduct of persons on or in that property; and
 - (f) the exclusion or ejection of persons from that property or any part of it.
- (3) The by-laws –
- (a) may apply generally to the property referred to in subsection (1), or to any specified area of that property; and
 - (b) may impose a penalty, not exceeding 5 penalty units, in respect of a contravention of the by-laws.
- (4) The by-laws must be made under the seal of the Trust.
- (5) Section 47 of the *Acts Interpretation Act 1931* does not apply to the by-laws and the by-laws

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Part 5 – Additional Provisions Relating to Trust

are not statutory rules within the meaning of the
Rules Publication Act 1953.

42. Rules

- (1) The Trust may make rules for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the rules may make provision for or with respect to all or any of the following matters:
 - (a) the regulation of the affairs, business and management of the Trust;
 - (b) the convening, holding and conduct of meetings of the members of the Trust, the Board and any committee established by the Board;
 - (c) the quorum at any meeting of members of the Trust and any committee established by the Board and the voting at those meetings (whether by post, proxy or otherwise);
 - (d) the election of the directors, Chairperson and Deputy Chairperson of the Board;
 - (e) the appointment of a person to fill a vacancy in the office of Chairperson or Deputy Chairperson of the Board;
 - (f) the admission, resignation and expulsion of members of the Trust;

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- (g) the subscriptions payable by, and the imposition of levies on, members of the Trust and the recovery of any such subscriptions and levies;
 - (h) the duties of the Chairperson and Deputy Chairperson of the Board;
 - (i) the establishment, functions and operations of committees and other persons or bodies for the purpose of furthering the objects of the Trust.
- (3) Section 47 of the *Acts Interpretation Act 1931* does not apply to the rules and the rules are not statutory rules within the meaning of the *Rules Publication Act 1953*.

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Part 6 – Appointment, Powers, &c., of Administrator

**PART 6 – APPOINTMENT, POWERS, &C., OF
ADMINISTRATOR**

43. Appointment of Administrator

- (1) The Minister, by instrument in writing, may appoint an Administrator to administer the affairs, activities, business and management of the Trust if the Minister is satisfied that it is in the public interest for an Administrator to be appointed.
- (2) The term for which the Administrator may be appointed is not to exceed 2 years.
- (3) A State Service officer or State Service employee may hold office as Administrator in conjunction with State Service employment.
- (4) An Administrator is to be paid such remuneration, allowances and expenses as the Minister may determine.
- (5) Notwithstanding subsection (4), if a State Service officer or State Service employee is appointed as Administrator, he or she is entitled to receive, by way of remuneration, allowances and expenses, such amounts as the Minister administering the *State Service Act 2000* may determine.

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Part 6 – Appointment, Powers, &c., of Administrator

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44. Functions and powers, &c., of Administrator

- (1) On the appointment of an Administrator, the Minister must serve on the Trust a copy of the instrument of appointment.
- (2) On service on the Trust under subsection (1) of the instrument of appointment –
 - (a) the functions and powers of the Trust and the Board are to be performed and exercised by the Administrator in the name and on behalf of the Trust or Board for the period specified in that instrument of appointment and in accordance with any directions given by the Minister; and
 - (b) the directors cease to hold office; and
 - (c) any committees established by the Board may continue to function at the discretion of the Administrator; and
 - (d) the Administrator is to be responsible for the management, affairs, activities and business of the Trust; and
 - (e) the Administrator, as soon as practicable, is to take into his or her custody or under his or her control all the property and things in action to which the Trust and Board are or appear to be entitled; and
 - (f) any delegation made by the Board ceases to have effect.

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Part 6 – Appointment, Powers, &c., of Administrator

- (3) Nothing contained in the rules limits the powers of an Administrator during the term of his or her office, and the Administrator may perform and exercise his or her functions and powers.
- (4) During the period of administration of the Trust –
 - (a) the Administrator may seek advice from the person who was Chairperson of the Board and the chairperson of any committee established by the Board; and
 - (b) the Minister is to consult with persons to ensure that appropriate provision is made for the future of the Trust; and
 - (c) the Administrator may take such action and do such things as the Administrator considers necessary to ensure the proper management of the affairs, activities and business of the Trust both during and after the period of administration.

45. Vacation of office of Administrator, &c.

- (1) An Administrator vacates office if –
 - (a) he or she dies; or
 - (b) he or she 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

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remuneration or estate for their benefit;
or

- (c) he or she is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer; or
 - (d) he or she resigns by written notice given to the Minister; or
 - (e) his or her appointment is revoked by the Minister under subsection (2).
- (2) The Minister may revoke the appointment of an Administrator.
- (3) If the office of Administrator is vacated under subsection (1), the Minister may, by instrument in writing, appoint another person to fill the vacancy for the remainder of the Administrator's term of office.

46. Expenses of administration

- (1) The expenses of and incidental to the administration of the affairs, activities, business and management of the Trust and Board by an Administrator are payable by the Trust.
- (2) For the purposes of subsection (1), the remuneration, allowances and expenses of an Administrator are not expenses of or incidental to the administration.

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Part 6 – Appointment, Powers, &c., of Administrator

- (3) If an Administrator appointed under section 43 is a State Service officer or State Service employee, the amount determined by the Minister administering the *State Service Act 2000* in respect of the remuneration, allowances and expenses of the officer or employee is not an expense referred to in subsection (1) and is payable by the Crown.

47. Liability for losses incurred during administration

An Administrator does not incur any personal liability for any loss incurred by the Trust or Board, or by the Administrator while acting in good faith in his or her capacity as Administrator, during his or her term of office unless the loss was attributable to –

- (a) his or her wilful misconduct; or
- (b) his or her gross negligence; or
- (c) his or her wilful failure to comply with any provision of this Act.

48. Winding up

- (1) The Trust may be wound up in the same manner as that in which a company may be wound up under the *Companies (Tasmania) Code* but only on the ground that it is unable to pay its debts, and for that purpose Part XII (Winding up) of that Code applies to the Trust as if it were a company.

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- (2) If the Trust is wound up –
- (a) a person is not, as a present or past member, liable to contribute to the property of the Trust for the purposes of payment of its debts or liabilities or of the costs, charges or expenses of the winding-up or for the purposes of the adjustment of the rights of such members among themselves; and
 - (b) the property of the Trust alone is liable for those purposes.
- (3) The liquidator appointed for the winding-up of the Trust is to transfer any property to such body or person as the Minister may direct, on such terms (including as to any consideration to be paid) as the Minister thinks appropriate.
- (4) Property ordered to be transferred under this section is not liable to be applied in discharge of the Trust's debts or liabilities or of the costs, charges or expenses of the winding-up, but is to be transferred subject to any trust, mortgage, charge or encumbrance to which it was subject immediately before being transferred.

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Part 7 – Miscellaneous

PART 7 – MISCELLANEOUS

49. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for fees and charges payable in respect of any matter under this Act.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Board or the managing director.

50. Repeal

The National Trust of Australia (Tasmania) Act 1975 is repealed.

51. Transitional provisions

Schedule 3 has effect with respect to transitional provisions.

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52. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Tourism, Arts and the Environment; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Tourism, Arts and the Environment.

**SCHEDULE 1 – DIRECTORS AND MEETINGS OF
BOARD**

Sections 13 and 17

PART 1 – DIRECTORS

1. Election of directors

- (1) The elected directors are to be elected from among the members of the Trust by the Trust in accordance with the rules and regulations.
- (2) A person is not eligible for election or appointment as a director if the person –
 - (a) is under the age of 18 years; or
 - (b) holds any other office or place of profit under the Trust.
- (3) The rules for the election of directors must provide for the individual election of directors.

2. Chairperson and Deputy Chairperson

- (1) At the first meeting of the Board held after each annual general meeting of the Trust, the directors are to elect from among themselves in accordance with the rules a Chairperson and Deputy Chairperson.
- (2) The Chairperson and Deputy Chairperson hold office as such until the election of their successors at the next such meeting of the Board

in the following calendar year unless earlier removed from office.

- (3) The Board may remove a director from the office of Chairperson or Deputy Chairperson at any time.
- (4) A person who holds the office of Chairperson or Deputy Chairperson vacates that office if the person –
 - (a) is removed from that office by the Board; or
 - (b) resigns that office by instrument in writing addressed to the Board; or
 - (c) ceases to be a director.
- (5) If a Chairperson or Deputy Chairperson resigns or is removed from office, the Board may appoint another director to that office in accordance with the rules.

3. When office of director becomes vacant

The office of a director becomes vacant if the director –

- (a) dies; or
- (b) completes a term of office; or
- (c) resigns the office by instrument in writing addressed to the Board; or

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- (d) except in the case of the managing director, ceases to be a member of the Trust; or
- (e) in the case of the managing director, is removed from office by the Board; or
- (f) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the director personally or in the ordinary course of post, unless –
 - (i) on leave granted by the Board; or
 - (ii) excused by the Board for having been absent from those meetings, before the expiration of 4 weeks after the last of those meetings; or
- (g) is removed from office under clause 5; or
- (h) 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
- (i) is diagnosed as suffering from a mental disorder; or
- (j) is convicted in Tasmania of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Tasmania of an offence that, if committed in Tasmania, would be an offence so punishable.

4. Vacancy in office of non-executive director

- (1) If the office of a non-executive director becomes vacant under clause 3, the Board may appoint a member of the Trust to fill the vacancy during the remainder of the term of office of the director.
- (2) If, due to vacancies in the offices of non-executive directors, there are insufficient directors to constitute a quorum, the managing director is to appoint members of the Trust to fill such of those vacancies as are necessary to constitute a quorum.

5. Disclosure of interests

- (1) If –
 - (a) a director 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 director's duties in relation to the consideration of the matter –

the director must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Board.

- (2) A disclosure by a director at a meeting of the Board that the director –

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- (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 –

and 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 are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours at the principal office of the Trust to inspection by any member of the Trust.
- (4) After a director has disclosed the nature of an interest in any matter, the director is not, unless the Board by special resolution otherwise determines –
 - (a) to be present during any deliberation of the Board with respect to the matter; or
 - (b) to 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 by special resolution

under subclause (4), a director who is the subject of the proposed special resolution is not –

- (a) to be present during any deliberation of the other directors for the purpose of making the determination; or
 - (b) to take part in the making by the other directors of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.
- (7) The Board may remove a director who contravenes subclause (1) from office as a director.

6. Reimbursement of expenses

A director is entitled to be reimbursed such reasonable expenses as are agreed by the Board.

PART 2 – MEETINGS

1. 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 rules, to be as determined by the Board.

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2. Quorum

The quorum for a meeting of the Board is 4 directors.

3. Presiding director

The Chairperson of the Board or, in the absence of the Chairperson, the Deputy Chairperson of the Board or, in the absence of both the Chairperson and the Deputy Chairperson, another director elected to chair the meeting by the directors present is to preside at a meeting of the Board.

4. 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.

5. Validity of proceedings

- (1) An act or proceeding of the Board or of any person acting under any direction of the Board is not invalidated or prejudiced by reason only of the fact that, at the time when the act or proceeding was done, taken or commenced, there was a vacancy in the membership of the Board.
- (2) All acts and proceedings of the Board or of any person acting under any direction of the Board

are, notwithstanding the subsequent discovery of any defect in the appointment of a director or that any person was disqualified from acting as, or incapable of being, a director, as valid as if the director had been duly appointed and was qualified to act as, or capable of being, a director and as if the Board had been fully constituted.

6. Conduct of meetings

- (1) Subject to this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Board may permit directors to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Board.
- (3) A director who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

7. Resolutions without meetings

- (1) If all directors sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Board held on the day on which the document is signed or, if the directors do not sign it on the same day, on the day on which the last of the directors signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each director is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, is taken to constitute one document.

8. Presumptions

In any proceeding by or against the Trust, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Trust; and
- (b) the presence of a quorum at any meeting of the Trust.

SCHEDULE 2 – COMMITTEES

Section 22(4)

1. Membership of committees

- (1) A committee consists of such number of persons as the Board determines.
- (2) The managing director is to be available to attend meetings of the audit committee, but is not to be a member of the committee.
- (3) The chairperson of the audit committee must be a non-executive director.

2. Conditions of appointment

- (1) A member of a committee is entitled to be reimbursed such reasonable expenses as are agreed by the Board.
- (2) A member of a committee holds that office on such conditions as may be determined by the Board.

3. Meetings

- (1) Meetings of a committee are to be held in accordance with any directions given by the Board.
- (2) A committee may obtain assistance, information and advice from any person.

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- (3) Except as provided by this Schedule and the rules, a committee may regulate the calling of, and the conduct of business at, its meetings.

4. Disclosure of interests

A member of a committee has the same duties in respect of the disclosure of interests to the committee as a director has in respect of the disclosure of interests to the Board.

SCHEDULE 3 – TRANSITIONAL PROVISIONS

Section 51

1. Interpretation

In this Schedule –

“commencement day” means the day on which this Act commences;

“Department” means the department responsible, immediately before the commencement day, to the Minister for Tourism, Arts and the Environment in relation to the Repealed Act;

“former Trust” means the National Trust of Australia (Tasmania) established under the Repealed Act;

“President” means the President of the former Trust appointed under the Repealed Act;

“Repealed Act” means the *National Trust of Australia (Tasmania) Act 1975*.

2. Committees

On the commencement day –

- (a) any committee established under the Repealed Act is dissolved; and

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- (b) any appointment made under the Repealed Act is revoked.

3. Covenants

Any covenant that was entered into by the former Trust under section 19 of the Repealed Act and that remains in force immediately before the commencement day is, on and after that day, taken to have been entered into by the Tasmanian Heritage Council established under section 5 of the *Historic Cultural Heritage Act 1995* and is enforceable by that Council in the same manner as the covenant was enforceable by the former Trust under section 19 of the Repealed Act immediately before that day.

4. Transfer of property

- (1) In this clause –

“transfer day” means the day specified in an order made under subclause (2) on which any property, right, liability or obligation vests in or is transferred to the Trust;

“transferred property” means any property, right, liability or obligation specified in an order made under subclause (2) and vested in or transferred to the Trust.

- (2) Within 2 years after the commencement day and with the agreement of the Minister, the Treasurer and the Trust, a Minister to whom a Government

department that is responsible for any property, rights, liabilities and obligations of the Crown is responsible may, by order –

- (a) transfer any of that property (other than Crown land) or any of those rights, liabilities and obligations to the Trust; and
 - (b) provide for any matter that is incidental to that transfer.
- (3) A transfer referred to in subclause (2) may be made for valuable consideration or otherwise.
- (4) On the day specified in an order made under subclause (2) –
 - (a) the property (other than Crown land) and rights specified in, and transferred by, the order vest in the Trust; and
 - (b) the liabilities and obligations specified in, and transferred by, the order become the liabilities and obligations of the Trust.
- (5) Except as otherwise provided in an order made under subclause (2), on and after the transfer day –
 - (a) any legal proceedings pending immediately before the transfer day and which were instituted by or against the Crown or a statutory authority in respect of the transferred property may be continued by or against the Trust; and

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- (b) any legal proceedings by or against the Crown or a statutory authority in respect of the transferred property to enforce a right that had accrued, and was in existence, immediately before the transfer day may be commenced by or against the Trust; and
 - (c) a judgment or order of a court obtained before the transfer day by or against the Crown or a statutory authority in respect of the transferred property may be enforced by or against the Trust; and
 - (d) a document addressed to the Crown or a statutory authority in respect of the transferred property may be served on the Trust; and
 - (e) a contract made or entered into by the Crown or a statutory authority in respect of the transferred property before the transfer day but not performed or discharged before that day is taken to have been made or entered into by the Trust.
- (6) If a Minister transfers any property, right, liability or obligation of a statutory authority to the Trust under subclause (2), that property, right, liability or obligation is to be taken to have been vested in, or to have belonged to, the Crown immediately before the transfer day.
- (7) A person who is a party to a contract is not entitled to terminate that contract by reason only

of the transfer, under an order made under subclause (2), of any property, right, liability or obligation to which that contract relates.

- (8) On the recommendation of the Minister, the Treasurer may, by order, exempt the Trust from any liability to pay all or any State charges, as specified in the order, in respect of the transfer of any property, right, liability or obligation under this clause.

5. Legal matters

- (1) Any legal proceedings instituted by or against the Crown in respect of anything done or omitted by the former Trust which are pending immediately before the commencement day may be continued by or against the Trust.
- (2) Legal proceedings by or against the Crown in respect of anything done or omitted by the former Trust, to enforce a right that had accrued, and was in existence, immediately before the commencement day, may be commenced by or against the Trust.
- (3) A judgment or order of a court obtained by or against the Crown in respect of anything done or omitted by the former Trust may be enforced by or against the Trust.
- (4) A document relating to legal proceedings concerning the former Trust, and addressed to the Department, the Crown in respect of the

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Department or the former Trust, may be served on the Trust.

- (5) A contract made or entered into by the Crown in respect of anything done or omitted by the former Trust, but not performed or discharged before the commencement day, is taken, on and after that day, to have been made or entered into by the Trust.

6. References to President

A reference in any Act or other document to the President is taken to be a reference to the managing director.