



1984

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PARLIAMENT OF TASMANIA

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PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS

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**REPORT ON  
NATIONAL TRUST PRESERVATION FUND  
(HOBART)**

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*Laid upon the Tables of both Houses of Parliament*

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The Committee was appointed under the provisions of section 2 of the Public Accounts Committee Act 1970 (No. 54).

**MEMBERS OF THE COMMITTEE**

LEGISLATIVE COUNCIL  
Mr McKay (Chairman)  
Mr Batt  
Mr Gregory

HOUSE OF ASSEMBLY  
Mr Bonney  
Mr Graham  
Mr Salter

By Authority:

A. B. CAUDELL, Government Printer, Tasmania

## NATIONAL TRUST PRESERVATION FUND (HOBART)

The Committee noted the following comments by the Auditor-General at page 150 of his 1983 Report:—

Details concerning the objectives and trusteeship of this Fund were updated in my 1982 Report, subsequent to which I sought advice of the Solicitor-General on progress made to resolve problems associated with the Trust's Constitution. Advice received from the Assistant Crown Solicitor in April 1983 was to the effect that a charitable trust existed but there was no trust deed governing it. He also considered the present acting trustees were not validly appointed under the Trustee Act 1898 and referred to them as trustees *de son tort*.

I have been informed by the National Trust of Australia (Tasmania) that the Trustees have not been able to draft a mutually acceptable trust deed and hence the position of trustees remains unresolved.

Income for 1982-83 of \$78 864 was entirely derived from investments whilst administrative expenditure amounted to \$232. A grant of \$10 000 from the State Government was not received in time for inclusion in the accounts whilst the matching grant from the Hobart City Council had not been received at the time of preparing this segment of the Report. Accumulated Funds at 30 June 1983 were \$602 909.

Statement for the year ended 30 June 1983 has been examined and my certificate to this, together with those for the years ended 30 June 1981 and 1982, is being withheld pending resolution of the Trust Deed.

Because of the undesirability of continuing State Government support while the matter remains unresolved, the Committee asked the Treasury to advise on whether any progress had been made towards a solution of the problem, how well the Treasury was being kept informed and what consideration was being given to suspending payment of the State grant while it was not being utilised. In reply we were informed that the Fund was formed in 1966 to operate under an informal arrangement between the National Trust of Australia (Tasmania), the Hobart City Council and the State Government which had been approved by the then Attorney-General. In 1979, the Trust considered it desirable that the arrangement be formalised by means of a Trust Deed. At that time, a draft Deed was drawn up which was approved by the Council and the Trust, but not by the Government.

Advice received from the Crown Law Office in August 1981 was to the effect that, whilst a valid Charitable Trust existed, there was no Trust Deed governing it. Furthermore, the acting trustees were not validly appointed which meant that a Deed could not be executed by them. At this stage, it was decided not to pay any further grants from the Fund until a Trust Deed had been finalised.

The Treasury advised that the Council and the Trust had agreed to a revised draft Trust Deed which would be submitted to the Government for approval in due course. Provided the Attorney-General agreed with the terms and conditions of the Deed, application would be made to the Supreme Court to formalise the document.

The Under-Treasurer said that Premier's Department and the Law Department had been kept fully advised of the progress in this matter.

Since its inception, the Council and the Government have each contributed \$160 000 to the Fund. As at 30 June 1983, accumulated funds amounted to in excess of \$600 000.

Under the draft Deed drawn up in 1979, the annual grants payable by the Government and the Council may cease when the Fund reaches a total value of \$500 000. Whilst never formalised, the draft document would no doubt express the spirit of the Trust. In view of this condition and having regard to the income derived by the Fund from investments, Treasury said that the Government had decided to cease payment of this grant as from 30 June 1983. The Council and the Trust had been advised of this decision, as had the Attorney-General in order that the Trust Deed then being prepared may incorporate the revised funding arrangements.

The Government decided to redirect this grant to the National Trust to be utilised for administration and other relevant purposes. An amount of \$15 000 will be paid to the Trust in 1983-84.

The Committee heard evidence from representatives of the Southern Regional Committee of the National Trust, who confirmed the advice received from Treasury. They said that —

Following an audience with the Minister for National Parks and Wildlife in March 1981 a succession of Ministers were approached until June 1982 when the present Minister took office.

In October 1982 the Attorney-General required the Solicitor-General to arrange application to the Supreme Court.

In July 1983 the Solicitor for the City Council produced a draft deed containing an alteration to the original deed executed in 1980. The alteration was not approved by the National Trust.

In November 1983 the National Trust acceded to the Council's representations and agreed to the alteration. It is understood that the final draft is in the hands of the Crown Solicitor.

The Committee subsequently wrote to the Attorney-General asking to be kept informed of developments. It is with considerable satisfaction that we record having received the following replies:—

11 January 1984 — The matter is now in the hands of the Crown Solicitor who has been instructed to institute proceedings in the Supreme Court. I am advised that proceedings have commenced.

The procedure to be followed in such actions is quite complex, and I am not certain when a hearing can be obtained before the Court. However, every endeavour will be made to resolve this matter at the earliest possible date.

2 May 1984 — I am writing to advise you that the outstanding matters associated with the above Fund have virtually been resolved.

On 9 April 1984 the Master of the Supreme Court ordered that the Fund be established as a charitable trust, that the terms of the trust be in accordance with the deed agreed by the parties, that the deed be executed accordingly, that Peter Murrell, Anthony D. Haigh and Peter M. Johnstone be appointed as trustees, and that the funds vest in the trustees.

The formal order will shortly be taken out and the deed can then be executed.

2 August 1984 — I refer to my predecessor's letter to you dated 2 May 1984, and advise that the deed has been executed and the problems associated with this Fund are now resolved.

The Committee consider it regrettable that the use of this fund was hindered for so long, but do not seek to apportion blame, since this was the product of disagreement between bodies independent of each other. However it was a matter of some concern to the Auditor-General, and quite properly raised by him.

P. C. McKAY, Chairman

Committee Room No. 3,  
Parliament House,  
Hobart.

31 October 1984