

Environmental Trust Act 1998

As at 1 August 2018

See also:

Government Sector Finance Legislation (Repeal and Amendment) Bill 2018

Long Title

An Act to fund environmental restoration, rehabilitation, research and education and to fund land acquisition for the national parks estate; to constitute the Environmental Trust to administer the funding arrangements; to repeal the *Environmental Restoration and Rehabilitation Trust Act 1990*, the *Environmental Research Trust Act 1990* and the *Environmental Education Trust Act 1990*; to amend the *Forestry Restructuring and Nature Conservation Act 1995* and other Acts; and for other purposes.

Part 1 – Preliminary

1 Name of Act

This Act is the *Environmental Trust Act 1998*.

2 Commencement

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

3 Definitions

In this Act:

"**exercise**" a function includes perform a duty.

"**financial year**" means the year ending on 30 June.

"**function**" includes a power, authority or duty.

"**grant**" means a grant made from the Trust Fund under this Act, but does not include amounts expended for clean-up action under section 16.

"**Trust**" means the Environmental Trust established by this Act.

"**Trust Fund**" means the Environmental Trust Fund established by this Act.

4 Act subject to Forestry Restructuring and Nature Conservation Act 1995

This Act is subject to the *Forestry Restructuring and Nature Conservation Act 1995*.

Part 2 – Environmental Trust

5 Constitution of Trust

(1) There is constituted by this Act a body corporate with the corporate name of the Environmental Trust.

(2) The Trust has the functions conferred or imposed on it by or under this or any other Act.

(3) The Trust is, for the purposes of any Act, a statutory body representing the Crown.

6 Membership and procedure of Trust

(1) The Trust is to consist of 5 members.

(2) The members of the Trust are:

(a) the Minister, who is to be the Chairperson of the Trust, and

(b) the Secretary of the Treasury, and

(c) the Chief Executive of the Office of Environment and Heritage, and

(d) a person appointed by the Minister from a panel of 3 persons nominated by the Nature Conservation Council, and

(e) a person appointed by the Minister from a panel of 3 persons nominated by the Local Government and Shires Association of New South Wales.

(3) Schedule 1 has effect with respect to the Trust.

7 Objects of Trust

The objects of the Trust are as follows:

(a) to encourage and support restoration and rehabilitation projects in both the public and the private sectors that will or are likely to prevent or reduce pollution, the waste-stream or environmental degradation, of any kind, within any part of New South Wales,

(b) to promote research in both the public and the private sectors into environmental problems of any kind and, in particular, to encourage and support:

(i) research into and development of local solutions to environmental problems, and

(ii) discovery of new methods of operation for New South Wales industries that are less harmful to the environment, and

(iii) research into general environmental problems, and

(iv) assessment of environmental degradation,

(c) to promote environmental education and, in particular, to encourage the development of educational programs in both the public and the private sectors that will increase public awareness of environmental issues of any kind,

(d) to fund the acquisition of land for national parks and other categories of dedicated and reserved land for the national parks estate,

(e) to fund the declaration of areas for marine parks and for related purposes,

(f) to promote waste avoidance, resource recovery and waste management (including funding enforcement and regulation and local government programs),

(g) to fund environmental community groups,

(h) to fund the purchase of water entitlements for the purposes of increasing environmental flows for the State's rivers and restoring or rehabilitating major wetlands.

8 Functions of Trust

The Trust may, for the purpose of promoting its objects:

(a) make grants (either unconditionally or subject to conditions) for projects, matters or purposes of a kind described in section 7, and

(b) supervise the expenditure of money so granted, and

(c) expend money as authorised by section 16 (Special provision for pollution clean-up costs), and

(d) engage in such other activities relating to its objects as the Minister may approve.

9 Committees of Trust

(1) The Trust is to establish Technical Review Committees.

(2) Each Technical Review Committee is to include at least one representative of community groups and at least one representative of industry.

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

- (4) The members of a committee need not be members of the Trust.
- (5) 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.

10 Staff of Trust

- (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 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.

11 Delegation by Trust

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

Part 3 – Grants

12 Minimum annual grants for different areas

The Trust is to ensure that the total amount of grants for each of the following areas during a financial year is not less than the amount specified in respect of that area:

- (a) grants to community organisations to encourage and support restoration and rehabilitation projects--\$1 million,
- (b) grants to community organisations, universities and research institutes to promote research--\$0.5 million,
- (c) grants to community organisations to promote environmental education--\$0.5 million.

13 Program for annual grants

- (1) Grants by the Trust for any financial year are to be made in accordance with a grants program determined by the Trust in accordance with the requirements of this Act.
- (2) A grants program must identify the policies of the Trust for determining grants, including:
 - (a) priorities for funding, and
 - (b) amounts available for grants in different program areas, and
 - (c) limits on the size of individual grants.
- (3) More than one grants program may be determined in respect of a financial year.
- (4) The Trust must publish information about each grants program in a manner that the Trust is satisfied is likely to bring the information to the attention of organisations and persons who may be interested in applying for grants.

14 Technical assessment of grant applications

- (1) The Trust is to refer each application for a grant to a Technical Review Committee of the Trust.
- (2) The 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 a 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.

15 Provisions relating to grants

- (1) Grants may be made to any person, including to any individual, corporation or organisation.
- (2) Each grant is to be made subject to a condition that the grant is to be expended within 3 years after it is made.
- (3) Each grant is subject to any relevant condition prescribed by the regulations and such other conditions as are specified by the Trust by notice in writing to the grantee on or after the making of the grant.

(3A) The Trust may, by further notice in writing to the grantee, vary any condition to which the grant is subject (other than a condition prescribed by the regulations), including any condition previously varied under this subsection.

(4) The Trust may waive the application of any provision 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*.

16 Special provision for pollution clean-up costs

(1) The Trust may expend money in the Trust Fund on the following:

(a) measures for the removal, dispersal or mitigation of serious pollution, when those measures need to be taken immediately,

(b) measures for the analysis, removal, storage, treatment or disposal of waste material that has been placed or disposed of on premises unlawfully, when no other person accepts responsibility for taking those measures.

(2) The Trust may publish guidelines for the expenditure of money under this section, including guidelines on the measures for which money can be expended, the pollution or waste material in respect of which money can be expended, the circumstances in which the money can be expended and the resolution of disputes about any such expenditure.

(3) The maximum amount that the Trust can expend under this section in any one financial year is \$0.5 million.

(4) The Trust (or a person acting with the written authority of the Trust) is entitled to recover the amount of any money expended under this section as a debt in a court of competent jurisdiction due to the Trust from the person who caused or was responsible for the pollution or the waste material.

(5) For the purposes of sections 246 and 247 of the *Protection of the Environment Operations Act 1997*, amounts expended from the Trust Fund under this section are taken to be costs and expenses incurred by the Trust as referred to in those sections.

(6) Any amount recovered by or on behalf of the Trust (whether or not under this section) in respect of the cost of measures that have been paid for out of the Trust Fund is to be paid into the Trust Fund.

17 Recovery of grants

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 (or, if the condition has been varied under section 15 (3A), the condition as so varied), 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

18 Environmental Trust Fund

(1) There is to be established in the Special Deposits Account an Environmental Trust Fund into which are to be paid:

(a) the amounts appropriated for the purposes of the Fund by section 19, and
(b) such other money as may be appropriated by Parliament for payment into the Fund, 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 required or permitted to be paid into the Fund.

(2) Money in the Trust 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 (or for the purposes authorised by the *Forestry Restructuring and Nature Conservation Act 1995*) and the costs incurred in administering this Act (or that Act).

19 Standing appropriation of Consolidated Fund for payment to Trust Fund

(1) There is payable from the Consolidated Fund into the Trust Fund each financial year (commencing with the 1998-99 financial year) the amount of \$13.5 million, as adjusted under subsection (2) for each subsequent financial year.

(2) For the purpose of the payment under subsection (1), the amount of \$13.5 million is to be adjusted for a financial year in accordance with the formula:

graphic

[Note: This is a graphic. It has not been processed by the Point in Time system and may not be accurate at the selected working date.]

and rounded to the nearest \$1,000.

(3) In subsection (2): "**CPI**" means:

(a) the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician, or

(b) if the Australian Statistician ceases to issue that index or the regulations so provide--the number determined in accordance with the regulations.

(4) The Consolidated Fund is appropriated by this section for the purposes of payments to the Trust Fund under this section.

(5) Payments to the Trust Fund under this section are to be made in such instalments and at such times as the Treasurer determines.

(6) This section is subject to clause 5 of Schedule 3.

20 Investments

The Trust is to invest money in the Trust 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 – Miscellaneous

21 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

22 Financial year of Trust

The financial year of the Trust is the year ending on 30 June.

23 Personal liability of members of Trust and others

A matter or thing done by the Trust, a member of the Trust or of a committee 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 any such member or a person so acting personally to any action, liability, claim or demand.

24 Proof of certain matters not required

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.

25 Regulations

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.

26 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

27 Repeal of Acts

The following Acts are repealed:

Environmental Restoration and Rehabilitation Trust Act 1990 No 24

Environmental Research Trust Act 1990 No 25

Environmental Education Trust Act 1990 No 26

28 (Repealed)

29 Savings, transitional and other provisions

Schedule 3 has effect.

Schedule 1 Provisions relating to members and procedure of Trust

(Section 6)

1 Definitions

In this Schedule:

"appointed member" means a member of the Trust referred to in section 6 (2) (d) or (e).

"Chairperson" means the Chairperson of the Trust.

"member" means a member of the Trust.

2 Nominations for appointed members

(1) If the nomination of a panel of persons from which a member is to be appointed is 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 a panel so nominated.

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

3 Deputies of members

(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 may, from time to time, appoint a person to be the deputy of an appointed member, and may revoke any such appointment.

(3) In the absence of a member, the member's deputy may, if available, act in the place of the member.

(4) While so acting, the deputy has all the functions of the member and is to be taken to be a member.

(5) This clause does not operate to confer on the deputy of a member who is the

Chairperson the member's functions as Chairperson.

4 Terms of office

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.

5 Allowances

(1) An eligible member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

(2) An eligible member is an appointed member, the deputy of an appointed member or a member of a committee of the Trust who is not a Minister, statutory officer or Public Service employee.

6 Vacancy in office of appointed member

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

(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 Minister, or

(d) is removed from office by the Minister 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 mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

7 Filling of vacancy in office of member

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

8 Effect of certain other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.

(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.

9 General procedure

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.

10 Quorum

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

11 Presiding member

- (1) The Chairperson 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.

12 Voting

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.

13 Transaction of business outside meetings or by telephone

- (1) The Trust may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Trust for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Trust.
- (2) The Trust may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Trust.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Trust.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

14 First meeting

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

Schedule 2 (Repealed)

Schedule 3 Savings, transitional and other provisions

(Section 29)

Part 1 – Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its

publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 – Provisions consequent on enactment of this Act

2 References to former Trusts and Funds

A reference in any other Act, in any statutory instrument or in any other document to:

(a) the Environmental Restoration and Rehabilitation Trust, the Environmental Research Trust or the Environmental Education Trust is to be construed as a reference to the Environmental Trust, or

(b) the Environmental Restoration and Rehabilitation Trust Fund, the Environmental Research Trust Fund or the Environmental Education Trust Fund is to be construed as a reference to the Environmental Trust Fund, or

(c) the *Environmental Restoration and Rehabilitation Trust Act 1990*, the *Environmental Research Trust Act 1990* or the *Environmental Education Trust Act 1990* is to be construed as a reference to the *Environmental Trust Act 1998*.

3 Dissolution of existing Trusts

(1) The Environmental Restoration and Rehabilitation Trust, the Environmental Research Trust and the Environmental Education Trust are each abolished.

(2) The assets, rights and liabilities of each such Trust become the assets, rights and liabilities of the Environmental Trust.

(3) The members of each such Trust cease to hold office as such on the abolition of the Trust and are not entitled to any remuneration or compensation for so ceasing to hold office.

4 Existing separate Trust Funds

(1) The Environmental Restoration and Rehabilitation Trust Fund, the Environmental Research Trust Fund and the Environmental Education Trust Fund are each terminated.

(2) Any amount standing to the credit of any such Fund on its termination is to be credited to the Environmental Trust Fund.

5 Transitional funding arrangements

(1) The Treasurer may direct, by order in the Gazette, that the commencement of the funding arrangements under section 19 is postponed until the financial year 1999-2000 or, by that or a subsequent order, until the financial year 2000-2001.

(2) On publication of the order, section 19 has effect subject to that order. An adjustment is to be made under section 19 (2) for the first financial year in which section 19 has effect in accordance with that order.

(3) If, because of this clause, section 19 does not apply in a financial year, there is payable into the Trust Fund all of the payments received by Sydney Water Corporation Limited or Sydney Water Corporation that are payable during that financial year for permissions or agreements relating to the discharge of trade waste into any service of Sydney Water Corporation Limited or Sydney Water Corporation.

(4) Amounts received by Sydney Water Corporation Limited or Sydney Water Corporation that are payable under the Acts repealed by this Act to the Funds established by those repealed Acts cease to be payable (subject to subclause (3)) on the repeal of those Acts. However, amounts received by that Corporation after the repeal of those Acts that are payable before the 1998-99 financial year are payable instead into the Trust Fund established by this Act (except as otherwise directed by the Treasurer).

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Environmental Trust Act 1998 No 82*. Assented to 14.7.1998. Date of commencement, 9.11.1998, sec 2 and GG No 155 of 30.10.1998, p 8511. This Act has been amended as follows:

1998	No 145	<i>Water Legislation Amendment (Drinking Water and Corporate Structure) Act 1998</i> . Assented to 8.12.1998. Date of commencement, 1.1.1999, sec 2 and GG No 176 of 18.12.1998, p 9726.
1999	No 94	<i>Crimes Legislation Amendment (Sentencing) Act 1999</i> . Assented to 8.12.1999. Date of commencement of sec 7 and Sch 5, 1.1.2000, sec 2 (1) and GG No 144 of 24.12.1999, p 12184.
2002	No 53	<i>Statute Law (Miscellaneous Provisions) Act 2002</i> . Assented to 4.7.2002. Date of commencement of Sch 1.8, assent, sec 2 (2).
2003	No 82	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2003</i> . Assented to 27.11.2003. Date of commencement of Sch 3, assent, sec 2 (1).
2005	No 56	<i>Brigalow and Nandewar Community Conservation Area Act 2005</i> . Assented to 1.7.2005. Date of commencement of Sch 12.1, 1.7.2005, sec 2 (2).
2013	No 111	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2013</i> . Assented to 3.12.2013. Date of commencement of Sch 2, 3.1.2014, sec 2 (1).
2015	No 58	<i>Statute Law (Miscellaneous Provisions) Act (No 2) 2015</i> . Assented to 24.11.2015. Date of commencement of Sch 3, 15.1.2016, sec 2 (3).
2018	No 25	<i>Statute Law (Miscellaneous Provisions) Act 2018</i> . Assented to 15.6.2018. Date of commencement of Sch 2, 1.8.2018, sec 2 (3).

Table of amendments

Sec 6	Am 2013 No 111, Sch 2.4; 2015 No 58, Sch 3.32 [1].
Sec 7	Am 2005 No 56, Sch 12.1.
Sec 8	Am 2002 No 53, Sch 1.8 [1].
Sec 13	Am 2018 No 25, Sch 2.8.
Sec 15	Am 2002 No 53, Sch 1.8 [2].
Sec 17	Am 2002 No 53, Sch 1.8 [3].
Sec 28	Rep 2003 No 82, Sch 3.
Sch 1	Am 1999 No 94, sec 7 (2) and Sch 5, Part 2; 2015 No 58, Sch 3.32 [2] [3].
Sch 2	Rep 2003 No 82, Sch 3.
Sch 3	Am 1998 No 145, Sch 5.6.