



Sydney Harbour Federation Trust Act 2001

No. 2, 2001

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About this compilation

This compilation

This is a compilation of the *Sydney Harbour Federation Trust Act 2001* that shows the text of the law as amended and in force on 1 July 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to establish the Sydney Harbour Federation Trust, and for related purposes

Preamble

The Parliament intends to conserve and preserve land in the Sydney Harbour region for the benefit of present and future generations of Australians. The land is being vacated by the Department of Defence and includes land at North Head, Middle Head, Georges Heights, Woolwich and Cockatoo Island. Suitable land with significant environmental and heritage values will be returned to the people of Australia.

The Parliament intends to establish the Sydney Harbour Federation Trust as a transitional body to manage the land and facilitate its return in good order. The Trust will transfer suitable land to New South Wales for inclusion in the national parks and reserves system.

Part 1—Preliminary

1 Short title

This Act may be cited as the *Sydney Harbour Federation Trust Act 2001*.

2 Commencement

- (1) This Act commences on a day to be fixed by Proclamation.
- (2) However, if this Act does not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then this Act commences on the first day after the end of that period.

Section 3

3 Definitions

In this Act, unless the contrary intention appears:

affected council means a council, established under the *Local Government Act 1993* of New South Wales, of the area in which:

- (a) land mentioned in Schedule 1 or 2; or
- (b) any other Trust land;

is situated.

Chair means the Chair of the Trust.

Commonwealth body includes a Department of State, or authority, of the Commonwealth.

Commonwealth member means a member who was appointed by the Minister under section 12, other than on the recommendation of New South Wales.

Commonwealth place means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

Executive Director means the Executive Director of the Trust.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

Harbour land means land in the Sydney Harbour region and includes Sydney Harbour's river systems, catchment area and North and South Head.

interest, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in relation to, the land.

interim Trust means the advisory body known as the interim Trust and established by the Commonwealth to commence planning and public consultation in respect of certain Harbour land.

land includes buildings and improvements on the land.

member includes the Chair.

plan means a plan prepared under Part 5 of this Act.

plan area means the land covered by a plan under section 27.

public employee means a person who is a full-time member, officer or employee of:

- (a) the Australian Public Service; or
- (b) the Public Service of a State or a Territory; or
- (c) an authority of the Commonwealth or a State or a Territory;
or
- (d) local government.

public notice means a notice published:

- (a) in the *Gazette*; and
- (b) in a daily newspaper circulating in the Sydney region; and
- (c) in a local newspaper circulating in the area concerned.

repeal time means the time at which this Act is repealed under section 66.

suitable person, in respect of a member, means a person with qualifications or experience relevant to one or more of the following fields:

- (a) environmental and heritage conservation;
- (b) indigenous culture;
- (c) land planning and management;
- (d) business management;

and any other field relevant to the Trust's functions.

Trust means the Sydney Harbour Federation Trust established by section 5.

Trust land means any land that:

- (a) vests in the Trust; and
- (b) is held by the Trust from time to time for and on behalf of the Commonwealth;

Part 1 Preliminary

Section 4

under section 22.

Trust land site means:

- (a) the sites mentioned in Schedules 1 and 2; or
- (b) land specified in a notice published in the *Gazette* under subsection 21(2).

4 Act binds the Crown

This Act binds the Crown in each of its capacities.

Part 2—Establishment of the Trust

5 Establishment

- (1) The Sydney Harbour Federation Trust is established by this section.
- (2) The Trust:
 - (a) is a body corporate with perpetual succession; and
 - (b) may have a common seal; and
 - (c) may sue and be sued in its corporate name.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Trust. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (3) All courts, judges and persons acting judicially must:
 - (a) take notice of the imprint of the common seal of the Trust appearing on a document; and
 - (b) presume that the document was duly sealed.

6 Objects

The objects of the Trust are the following:

- (a) to ensure that management of Trust land contributes to enhancing the amenity of the Sydney Harbour region;
- (b) to protect, conserve and interpret the environmental and heritage values of Trust land;
- (c) to maximise public access to Trust land;
- (d) to establish and manage suitable Trust land as a park on behalf of the Commonwealth as the national government;
- (e) to co-operate with other Commonwealth bodies that have a connection with any Harbour land in managing that land;
- (f) to co-operate with New South Wales, affected councils and the community in furthering the above objects.

Section 7

7 Functions

The functions of the Trust are the following:

- (a) to hold Trust land for and on behalf of the Commonwealth;
- (b) to undertake community consultation on the management and conservation of Trust land;
- (c) to do the things referred to in section 38A before plans take effect for an area of Trust land;
- (d) to develop draft plans in respect of Trust land and any other Harbour land in furthering the objects, and performing other functions, of the Trust;
- (e) to rehabilitate, remediate, develop, enhance and manage Trust land, by itself or in co-operation with other institutions or persons, in accordance with the plans;
- (f) to make recommendations to the Minister on:
 - (i) plans; and
 - (ii) the proposed transfer of any Trust land;
- (g) to promote appreciation of Trust land, in particular its environmental and heritage values;
- (h) to provide services and funding to other Commonwealth bodies in furthering the objects, and performing other functions, of the Trust;
- (i) anything incidental to or conducive to the performance of its other functions.

8 Powers

- (1) The Trust has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The Trust's powers include, but are not limited to, the following powers:
 - (a) negotiate with other Commonwealth bodies and with New South Wales and affected councils;
 - (b) acquire, hold and dispose of real and personal property;

- (c) enter into agreements with New South Wales and affected councils;
- (d) accept gifts, grants, bequests and devises made to it;
- (e) enter into contracts and agreements;
- (f) form, or participate in the formation of, companies;
- (g) enter into partnerships;
- (h) participate in joint ventures;
- (i) raise money, by borrowing or otherwise, in accordance with section 63.

9 Minister may give directions

- (1) The Minister may give written directions to the Trust in relation to the performance of its functions and the exercise of its powers.
- (2) The Minister must give the Trust written reasons for the directions.
- (3) The Trust must perform its functions and exercise its powers in a manner consistent with any directions given by the Minister under subsection (1).

Part 3—Constitution of the Trust

10 Membership of the Trust

The Trust consists of:

- (a) the Chair; and
- (b) 7 other members.

11 Invitations to NSW to recommend members

- (1) Before initially appointing members to the Trust, the Minister must invite New South Wales to recommend persons to be appointed to 2 membership positions.
- (3) If:
 - (a) a vacancy arises in the membership of the Trust; and
 - (b) there are not 2 other membership positions held by persons recommended by New South Wales;then the Minister must invite New South Wales to recommend persons to be appointed to the vacant membership position.
- (4) Within 2 months of receiving the invitation, New South Wales may recommend suitable persons.

12 Appointment of members

- (1) The members of the Trust are to be appointed by the Minister by written instrument.
- (2) The Minister must not appoint a person as a member unless the Minister is satisfied that the person is a suitable person.
- (3) One of the members must, in the Minister's opinion, represent the interests of indigenous people.
- (3A) Another of the members must be an elected member of an affected council.

- (4) The Minister must not appoint a person as a member if, immediately after the appointment of the person, more than one-half of the members of the Trust would be public employees.
- (5) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's appointment.

13 Terms of office of members

- (1) A member is to be appointed on a part-time basis.
- (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

14 Acting appointments

The Minister may appoint a member to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

15 Additional terms and conditions of appointment of members

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

16 Outside employment of members

A member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties.

Section 17

17 Remuneration and allowances of members

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18 Leave of absence

The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.

19 Resignation

A member may resign his or her appointment by giving the Minister a written resignation.

20 Termination of appointment of members

- (1) The Minister may terminate a member's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate a member's appointment if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Trust; or

- (c) the member engages in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the duties of his or her office.

Note: The appointment of a member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

- (3) The Minister must not terminate the appointment of a member appointed on the recommendation of New South Wales without first consulting New South Wales.
- (4) Subsection (3) is taken to apply in relation to a termination of the appointment of a member under section 30 of the *Public Governance, Performance and Accountability Act 2013* in the same way as that subsection applies to a termination of the appointment of a member under this section.

Part 4—Trust land

21 Vesting by Minister of land in the Trust

- (1) The Minister administering the *Defence Act 1903* must, by notice or notices published in the *Gazette*, specify that each Trust land site mentioned in Schedules 1 and 2 that is a Commonwealth place is to vest in the Trust in accordance with section 22 on a specified day that is within 4 years of this Act commencing. A notice may deal with a part only of a Trust land site.
- (2) The Minister may, by notice published in the *Gazette*, specify that a part of any other Harbour land that is a Commonwealth place is to vest in the Trust in accordance with section 22.
- (3) The notice must specify the day from which the land is to vest.

22 Vesting of Trust land

- (1) From the beginning of the day specified in the notice, all right, title and interest that the Commonwealth holds in the land vests in the Trust without any conveyance, transfer or assignment.
- (2) The Trust holds the land for and on behalf of the Commonwealth.

23 Minister may make arrangements

- (1) If:
 - (a) the Minister specifies land under section 21; and
 - (b) immediately before the land vests in the Trust under section 22, the Commonwealth is a party to an agreement or instrument that relates to the land;then the Minister may specify, in writing, the agreement or instrument for the purposes of this section.
- (2) An agreement or instrument specified under this section has effect, after the land vests in the Trust, as if:

- (a) the Trust were substituted for the Commonwealth as a party to the agreement or instrument; and
- (b) any reference in the agreement or instrument to the Commonwealth were (except in relation to matters that occurred before the land vested) a reference to the Trust.

24 Transfer of Trust land

- (1) The Trust must not sell or otherwise transfer the freehold interest in:
 - (a) any land mentioned in Schedule 1; or
 - (b) land identified in a plan as having significant environmental or heritage values;unless:
 - (c) the sale or transfer is to the Commonwealth, New South Wales or an affected council; and
 - (d) the instrument under which the sale or transfer occurs includes a condition that the land not be sold or otherwise transferred other than to the Commonwealth, New South Wales or an affected council.
- (1A) A purported sale or transfer of a freehold interest by an instrument that does not comply with paragraph (1)(c) or (d) is not effective.
- (1B) The Trust must not sell or otherwise transfer the freehold interest of any land mentioned in Schedule 2 without the written approval of the Minister.
- (2) If the Trust agrees to sell or otherwise transfer the freehold interest of any Trust land, then the Trust must seek the Minister's approval, in writing, of:
 - (a) the terms and conditions of the agreement; and
 - (b) the transferee.

25 Lands Acquisition Act not to apply

Part X of the *Lands Acquisition Act 1989* does not apply to the disposal by the Trust of Trust land or an interest in Trust land.

Part 5—Plans

26 Trust to prepare plans

- (1) Within 2 years of this Act commencing, the Trust must prepare a draft plan in respect of each Trust land site mentioned in Schedules 1 and 2.
- (2) Within 2 years of any other land vesting in the Trust under section 22, the Trust must prepare a draft plan in respect of that land.
- (3) The Minister may extend the period mentioned in subsections (1) and (2) on application, in writing, by the Trust, provided that the Trust has by public notice informed the public about the application and the reason for the extension of time.

27 Plan areas

- (1) A plan must cover at least one Trust land site and must not cover only a part of a site.
- (2) A plan may cover any Harbour land that has not vested in the Trust under section 22. However, the plan takes effect in respect of that land only when:
 - (a) the plan is approved and notified under this Part; and
 - (b) the land vests in the Trust.

Note: If the plan has been approved and notified under this Part before the land vests in the Trust, then the plan does not require further notification under section 34 when the land eventually vests in the Trust.

28 Content of plans

- (1) A plan must accord with the objects of the Trust.

- (2) The plan must accord with principles of ecologically sustainable development.
- (3) The plan must contain the following:
 - (a) a history and description of the plan area, including an identification of current land uses of the area or parts of the area;
 - (b) an assessment of the environmental and heritage values of the area;
 - (c) an assessment of the interrelationship between the plan area and the surrounding region, including other public land in the Sydney Harbour region and other Trust land;
 - (d) objectives for the conservation and management of the area;
 - (e) policies in respect of the conservation and management of the area;
 - (f) an identification of proposed land uses in the area or parts of the area;
 - (g) an identification of the nature of possible future owners of the area or parts of the area;
 - (h) guidelines, options (if necessary) and recommendations for the implementation of the plan;
 - (i) detailed estimates of costs that may be incurred in respect of the area, including costs for remediation, rehabilitation and conservation of the area;
 - (j) anything else required by the regulations.

29 Consultation on proposal to prepare draft plan

- (1) Before preparing a draft plan, the Trust must, by public notice:
 - (a) state that it proposes to prepare a draft plan in respect of a specified plan area; and
 - (b) invite interested persons to make representations in connection with the proposal by a specified date that is at least one month after the date of publication of the notice; and
 - (c) specify an address to which representations may be sent.

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- (2) A person may make written submissions to the Trust in connection with the proposal not later than the date stated in the notice.
- (3) The Trust:
 - (a) must take into account any submissions made to it in accordance with subsection (2); and
 - (b) must take into account any advice or recommendations received from an advisory committee established under Part 8; and
 - (c) may take into account any other submissions.

30 Consultation on draft plan

- (1) The Trust must make a draft plan, that it has prepared, publicly available by electronic or other means.
 - Note: The Trust can also charge a reasonable fee for copies of draft plans: see section 70A.
 - (2) The Trust must also, by public notice:
 - (a) state that the draft plan has been prepared in respect of a specified plan area; and
 - (b) state where the draft plan is made available to the public; and
 - (c) invite interested persons to make representations in connection with the draft plan by a specified date that is at least one month after the date of publication of the notice; and
 - (d) specify an address to which representations may be sent.
 - (3) A person may make written submissions to the Trust in connection with the draft plan not later than the date stated in the notice.
 - (4) The Trust:
 - (a) must take into account any submissions made to it in accordance with subsection (3); and
 - (b) must take into account any advice or recommendations received from an advisory committee established under Part 8; and
 - (c) may take into account any other submissions.
-

31 Minister to approve plans

- (1) The Trust must submit a draft plan, together with a written report on:
 - (a) its consultations under sections 29 and 30; and
 - (b) consultations (if any) with advisory committees established under Part 8;to the Minister (the *Commonwealth Minister*).
- (2) Before considering the draft plan, the Commonwealth Minister must:
 - (a) provide a copy of it, together with any relevant material, to a relevant Minister (the *State Minister*) of New South Wales; and
 - (b) invite the State Minister to provide comments on the draft plan within 2 months.
- (3) In considering the draft plan, the Minister must take into account any comments or alterations suggested, within the 2 months, by the State Minister.
- (4) The Commonwealth Minister may:
 - (a) approve the draft plan without alteration; or
 - (b) refer the draft plan to the Trust with either or both of the following:
 - (i) directions to conduct a public hearing or any other consultations;
 - (ii) suggested alterations; or
 - (c) reject the draft plan, giving reasons.

32 Action on referral by Minister

- (1) If the Minister refers a draft plan to the Trust, then the Trust must do the following:
 - (a) reconsider the draft plan;
 - (b) undertake the consultations directed by the Minister;

Section 33

- (c) undertake any other consultations as the Trust thinks necessary;
 - (d) consider any suggestions made by the Minister;
 - (e) if it thinks fit, alter the draft plan.
- (2) The Trust must then submit:
- (a) the draft plan; and
 - (b) a written report on additional consultations (if any) undertaken under this section;
- to the Minister for approval.
- (3) This Part (other than section 26) applies to a draft plan submitted under this section in the same way as it applies to a draft plan submitted under section 31.

33 Rejection of draft plan

- (1) If the Minister rejects the draft plan, then the Trust must:
- (a) consider the Minister's reasons; and
 - (b) prepare a new draft plan.
- (2) This Part (other than section 26) applies to a new draft plan in the same way as it applies to a draft plan submitted under section 31.

34 Notification of plan

If a plan is approved by the Minister, then the Trust must, by notice published in the *Gazette*:

- (a) state that a plan, in respect of a specified plan area or a part of a plan area, has been prepared; and
- (b) specify the day on which the plan takes effect for the area or the part of the area; and
- (c) state where the plan is made available to the public.

Note: The Trust can also charge a reasonable fee for copies of plans: see section 70A.

35 Commencement and implementation of plans

- (1) A plan takes effect for the plan area, or the part of the plan area, specified in a notice under section 34, from the beginning of the day specified in the notice.

Note: Section 27 contains an exception to this rule for land that has not vested in the Trust.

- (2) The Trust must begin to implement a plan as soon as practicable after it has taken effect for the plan area or the part of the plan area.

36 Amendment to plans

- (1) The Trust may, in writing, prepare an amendment to a plan.
- (2) Sections 28 to 35 apply in relation to the preparation of an amendment to a plan in the same way as they apply in relation to the preparation of a draft plan.

36A Submissions to be publicly available

- (1) The Trust must make publicly available, by electronic or other means, submissions made under Part 5 on:
 - (a) proposals to prepare draft plans; and
 - (b) draft plans; and
 - (c) amendments to draft plans.

Note: The Trust can also charge a reasonable fee for copies of submissions: see section 70A.

- (2) However, the Trust is not required to make a submission publicly available if, in the Trust's opinion, it would significantly damage the environmental or heritage values of Trust land.
- (3) No action or proceeding, whether civil or criminal, lies against a member of the Trust in respect of making a submission publicly available under this section.

37 Commonwealth etc. to act in accordance with plans

- (1) If a plan has been approved and notified for a plan area (even if the plan or a part of the plan has not taken effect in respect of that area), then the Commonwealth, the Trust and other Commonwealth bodies must act in accordance with the plan in carrying out activities in that area.
- (2) However, this section does not authorise or require the Commonwealth, the Trust or the Commonwealth body to carry out an activity that it is not otherwise legally able to carry out.

38 Transitional—interim Trust actions

Anything done, before this Act commences, by the Commonwealth on behalf of the interim Trust in relation to a plan is taken, for the purposes of this Act, to have been done by the Trust.

38A Transitional—activities before plans take effect

- (1) Before a plan takes effect for an area of Trust land, the Trust may:
 - (a) determine the way in which the area may be used before the relevant plan takes effect; and
 - (b) use the area in that way; and
 - (c) grant leases and licences over the area in accordance with section 38B; and
 - (d) carry out maintenance and repair work in the area; and
 - (e) carry out other work in the area to protect the health and safety of persons present there; and
 - (f) carry out other work that will only have a temporary impact on the area.
- (2) The Trust must not carry out, or allow to be carried out, any work other than the work mentioned in paragraphs (1)(d), (e) and (f).
- (3) The Trust must not cause significant damage, or allow significant damage to be caused, by doing things under subsection (1).

- (4) The Trust must not take into account things done under subsection (1) when determining the content of draft plans.

38B Transitional—leases and licences granted before plans take effect

- (1) This section applies to leases and licences granted under section 38A before a plan takes effect for an area.
- (2) A lease or licence for a fixed term over an area of Trust land:
- (a) must not be for a term of more than 12 months; and
 - (b) must expire within 18 months after the vesting of the land in the Trust.
- (3) A period under a lease for a periodic tenancy:
- (a) must not extend for more than one month; and
 - (b) must not begin after a plan takes effect for any of the area over which the lease is granted.
- (4) A licence that is not for a fixed term must be revoked before a plan takes effect for any of the area over which the licence is granted.
- (5) If a lease or fixed-term licence is in force for an area when a plan takes effect, then the plan takes effect except to the extent that it interferes with the operation of the lease or licence in that area.
- (6) A lease or licence that contravenes this section or subsection 38A(2) or (3) is void.

Part 6—Executive Director, staff and consultants

39 Executive Director

- (1) There is to be an Executive Director of the Trust who is to be appointed by the Minister on the recommendation of the Trust.
- (2) A member of the Trust cannot be appointed as Executive Director.
- (3) The appointment of a person as Executive Director is not invalid because of a defect or irregularity in connection with the person's appointment.

40 Duties of the Executive Director

The Executive Director is to manage the affairs of the Trust subject to the directions of, and in accordance with policies determined by, the Trust.

41 Term of office of Executive Director

- (1) The Executive Director is to be appointed on a full-time basis.
- (2) The Executive Director holds office for the period determined by the Minister on the recommendation of the Trust. The period must be specified in the instrument of appointment.

42 Acting appointments

- (1) The Trust may appoint a person to act as the Executive Director for a period not exceeding 3 months:
 - (a) during a vacancy in the office of Executive Director (whether or not an appointment has previously been made to the office); or
 - (b) during any period when the Executive Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) If at the end of the 3 month period:
- (a) there continues to be a vacancy in the office of Executive Director; or
 - (b) the Executive Director continues to be absent or unable to perform the duties of the office;
- then the Minister, on the recommendation of the Trust, may appoint a person to act as the Executive Director.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

43 Additional terms and conditions of appointment of Executive Director

- (1) The Executive Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Trust.
- (2) However, the Trust must first request the advice of the Remuneration Tribunal in respect of the remuneration and allowances of the Executive Director.

44 Outside employment of Executive Director

The Executive Director must not engage in paid employment outside the duties of his or her office except with the approval of the Trust.

45 Leave of absence

The Chair may grant leave of absence to the Executive Director on the terms and conditions that the Chair determines.

46 Resignation

The Executive Director may resign his or her appointment by giving the Minister a written resignation.

Section 47

47 Termination of appointment of Executive Director

The Minister may, on the recommendation of the Trust, terminate at any time the appointment of the Executive Director.

48 Employees

- (1) The Trust may employ any person who it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that the Trust determines.
- (3) The Executive Director, on behalf of the Trust, may arrange with the Secretary of any Department of the Australian Public Service, or with a body of the Commonwealth, for the services of officers or employees of that Department or of that body to be made available to the Trust.

49 Consultants

- (1) The Trust may engage persons having suitable qualifications and experience as consultants to the Trust.
- (2) The consultants are to be engaged on the terms and conditions that the Trust determines.

Part 7—Meetings of the Trust

50 Times and places of meetings

- (1) The Trust is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at such times and places as the Trust determines.
- (3) The Chair may call a meeting at any time if, in his or her opinion, it is in the public interest for the Trust to consider matters urgently.
- (4) The Chair must ensure that at least 4 meetings are held each year.
- (5) The Chair must also ensure that:
 - (a) at least one of those meetings is held in each 6 month period starting on 1 January or 1 July; and
 - (b) that meeting is open to the public.
- (6) A decision to meet in private must be recorded in the minutes together with the reasons for so deciding.

51 Notice of meetings

- (1) Each member is entitled to receive at least:
 - (a) 24 hours' notice of an urgent meeting called by the Chair under subsection 50(3); and
 - (b) 7 days' written notice of any other meeting of the Trust.
- (2) The Trust must also give at least 7 days' notice to the public of a meeting of the Trust, unless the meeting is an urgent meeting or is not open to the public.

52 Presiding at meetings

- (1) The Chair presides at all meetings at which he or she is present.

Section 53

- (2) If the Chair is not present at a meeting, the members present are to appoint a Commonwealth member to preside.

53 Quorum

A majority of the members for the time being holding office constitutes a quorum.

54 Voting at meetings

- (1) A question is decided by a majority of the votes of the members present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.

54A Minutes of meetings

- (1) The Trust must keep minutes of its meetings.
- (2) The reasons why the Chair called an urgent meeting under subsection 50(3) must be recorded in the minutes.
- (3) The name of each person who moves or seconds a motion must be recorded in the minutes.
- (4) The minutes must be made publicly available:
 - (a) by electronic means; and
 - (b) for inspection at an office of the Trust.

55 Conduct of meetings

The Trust may, subject to this Part, conduct proceedings at its meetings in accordance with a written code of meeting practice.

56 Resolutions without meetings

If the Trust so determines, a resolution is taken to have been passed at a meeting of the Trust if:

Section 56

- (a) without meeting, a majority of the members indicate agreement with the resolution in accordance with the method determined by the Trust; and
- (b) that majority would have constituted a quorum at a meeting of the Trust.

Part 8—Advisory committees

57 Community advisory committees

- (1) The Trust must, by writing, establish a community advisory committee in respect of each plan area.
- (2) The function of each committee is to provide advice or recommendations to the Trust on matters determined under subsection (6) relating to the relevant plan area.
- (3) In providing that advice or making those recommendations, each committee must consider:
 - (a) the relevant plan area in the context of the Sydney Harbour region; and
 - (b) the objects of the Trust and the other provisions of this Act.
- (4) Each committee consists of:
 - (a) one or more representatives, appointed by the Trust, of the local community and of affected councils; and
 - (b) any other person appointed by the Trust.
- (5) A member holds office for the period specified by the Trust. The period must not exceed 3 years.
- (6) The Trust must, after consulting a committee, give written directions to the committee on:
 - (a) matters in relation to which the committee is to give advice and recommendations under subsection (2); and
 - (b) the way in which the committee is to carry out its function; and
 - (c) procedures to be followed in relation to the meetings of the committee.

57A The Trust's obligations to community advisory committees

- (1) The Trust must provide each community advisory committee with documents and information relevant to matters on which the committee is to give advice or recommendations.
- (2) In making decisions or taking action in respect of a plan area, the Trust must consider any advice or recommendation of the relevant committee.

58 Technical advisory committees

- (1) The Trust may establish one or more technical advisory committees.
- (2) The function of a committee is to provide advice and recommendations on any or all of the following matters:
 - (a) environmental and heritage matters relating to plan areas;
 - (b) rehabilitation and decontamination of plan areas;
 - (c) planning and management of plan areas;
 - (d) financial arrangements for plan areas.
- (3) In making decisions or taking action in respect of Trust land, the Trust must consider any relevant advice or recommendation of a committee.
- (4) Each committee consists of persons, appointed by the Trust from time to time, who have considerable qualifications or experience in relation to the matters mentioned in subsection (2).
- (5) The Trust may give a committee written directions as to:
 - (a) the way in which the committee is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.

Part 9—Finance

59 Appropriation of money

- (1) There is payable to the Trust such money as is appropriated by the Parliament.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Trust.

60 Application of money

- (1) The Trust's money is to be applied only:
 - (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Trust in the performance of its functions and the exercise of its powers; and
 - (b) in payment or discharge of the liability imposed under section 61; and
 - (c) in payment of remuneration and allowances payable under this Act.
- (2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Trust.

61 Interim Trust costs etc.

- (1) If, whether before or after the commencement of this Act, the Commonwealth incurs costs or liabilities in respect of the interim Trust, then the Sydney Harbour Federation Trust must pay to the Commonwealth an amount equal to those costs or liabilities.
- (2) The amount may be recovered by the Commonwealth as a debt due to the Commonwealth in a court of competent jurisdiction.

62 Borrowing

- (1) The Trust may, with the approval of the Finance Minister, borrow money from the Commonwealth or persons other than the Commonwealth on terms and conditions that are specified in, or are consistent with, the approval.
- (2) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under this section to an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a non-corporate Commonwealth entity (within the meaning of that Act). In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

63 Trust may give security

- (1) The Trust must not give security over any land mentioned in Schedule 1.
- (2) However, the Trust may give security over:
 - (a) the whole or any part of any other Trust land that is identified as suitable for sale in a plan approved under Part 5; or
 - (b) any other assets;for:
 - (c) the repayment by the Trust of money borrowed by the Trust under section 62 and the payment by the Trust of interest (including any compound interest) on that money; or
 - (d) the payment by the Trust of amounts (including any interest) that the Trust is liable to pay with respect to money raised by the Trust under paragraph 8(2)(i).

64 Contracts

The Trust must not, except with the Minister's written approval:

- (a) enter into a contract involving the payment or receipt by the Trust of an amount exceeding \$1,000,000; or

Section 64A

- (b) enter into a lease or licence of Trust land for a period that ends after the end of 19 September 2033.

Note: This Act commenced on 20 September 2001.

64A Leases over 25 years

- (1) In addition to the requirement in section 64, before entering into a lease or licence over Trust land for a period of longer than 25 years, the Trust must, by legislative instrument, determine the proposed terms and conditions of the lease or licence.
- (3) The terms and conditions of the lease or licence must accord with the determination.

65 Liability to taxation

The Trust is not subject to taxation under a law of the Commonwealth or of a State or a Territory.

Part 10—Repeal of this Act

66 Repeal of this Act

- (1) As soon as practicable after the end of 19 September 2033, the Minister must, by notice published in the *Gazette*, specify a day on which this Act is to be repealed.

Note: This Act commenced on 20 September 2001.

- (2) This Act is repealed at the beginning of that day.

67 Transfer of assets

- (1) The Minister may, by writing, make any or all of the following declarations:
 - (a) a declaration that a specified asset vests in a specified person immediately before the repeal time without any conveyance, transfer or assignment;
 - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the specified person as if a reference in the instrument to the Trust were a reference to the person;
 - (c) a declaration that the specified person becomes the Trust's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (4) Subsection (1) does not prevent the Trust from transferring an asset to a person otherwise than under that subsection.

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68 Transfer of liabilities

- (1) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of the Trust and becomes a liability of the specified person immediately before the repeal time;
 - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the specified person as if a reference in the instrument to the Trust were a reference to the person;
 - (c) a declaration that the specified person becomes the Trust's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (2) A declaration under subsection (1) has effect accordingly.
- (3) A copy of a declaration under subsection (1) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (4) Subsection (1) does not prevent the Trust from transferring a liability to a person otherwise than under that subsection.

69 Residual assets and liabilities

- (1) Immediately before the repeal time, any residual assets and liabilities that have not been covered by a declaration under section 67 or 68 vest in the Commonwealth.
- (2) Any instrument relating to such an asset or liability continues to have effect after the asset or liability vests in the Commonwealth as if a reference in the instrument to the Trust were a reference to the Commonwealth.

Part 11—Miscellaneous

70 Annual report

The annual report prepared by the members and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must also include:

- (a) a description of the condition of plan areas at the end of the period; and
- (b) the text of all directions, and reasons for directions, given by the Minister to the Trust under section 9 during the period.

70AA Corporate plan

Subsection 35(3) of the *Public Governance, Performance and Accountability Act 2013* (which deals with the Australian Government's key priorities and objectives) does not apply to a corporate plan prepared by the members.

70A Fees for documents

The Trust may charge a reasonable fee for copies of the following documents:

- (a) draft plans and plans approved under Part 5;
- (b) submissions made under Part 5 on:
 - (i) proposals to prepare draft plans; and
 - (ii) draft plans; and
 - (iii) amendments to draft plans;
- (c) any other documents made available by the Trust.

71 Exemption from certain State laws

- (1) An excluded State law does not apply, and is taken never to have applied, in relation to:
 - (a) the Trust; or

Section 72

- (b) the property (including Trust land) or transactions of the Trust; or
 - (c) anything done by or on behalf of the Trust.
- (2) In this section:

excluded State law means a law of a State, including a law of a State that is applied to a Commonwealth place by virtue of the *Commonwealth Places (Application of Laws) Act 1970*, that relates to any of the following matters:

- (a) town planning;
- (b) the use of land;
- (c) tenancy;
- (d) powers and functions of local councils;
- (e) standards applicable to the design, or manner of construction, of a building, structure or facility;
- (f) approval of the construction, occupancy, use of or provision of services to, a building, structure or facility;
- (g) alteration or demolition of a building, structure or facility;
- (h) the protection of the environment or of the natural and cultural heritage;
- (i) dangerous goods;
- (j) licensing in relation to:
 - (i) carrying on a particular kind of business or undertaking; or
 - (ii) conducting a particular kind of operation.

law means a written law, and includes:

- (a) subordinate legislation; and
- (b) a provision of a law.

72 Delegation

- (1) The Trust may, by writing, delegate to:
- (a) the Executive Director; or
 - (b) an SES employee of the Department; or

- (c) a person employed under section 48;
all or any of the functions and powers conferred on the Trust by this Act.
- (2) The Executive Director must report at least once every 6 months on the exercise of delegated functions and powers.

73 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision relating to any of the following:
 - (a) conferring functions on the Trust for the purposes of the regulations;
 - (b) the content of plans;
 - (c) giving effect to, and enforcing the observance of, plans;
 - (d) the way in which proposed land uses are identified in draft plans;
 - (e) services and facilities in, or in connection with, Trust land;
 - (f) charging of fees by the Trust in respect of services or facilities provided by the Trust in or in connection with Trust land;
 - (g) protecting and conserving the environmental and heritage values of Trust land;
 - (h) removing persons unlawfully on Trust land or committing offences against regulations on Trust land;
 - (i) regulating conduct of persons on Trust land;
 - (j) regulating or prohibiting carrying on any trade or commerce on Trust land;
 - (k) removing unauthorised structures from Trust land;
 - (l) granting or issuing licences, permissions, permits and authorities in respect of Trust land;

Section 73

- (m) the conditions subject to which licences, permissions, permits and authorities are granted or issued;
- (n) charging of fees by the Trust in respect of such licences, permissions, permits and authorities;
- (o) penalties for offences against the regulations by way of fines of no more than 10 penalty units;
- (p) functions and powers of wardens and rangers for Trust land;
- (q) the appointment of wardens and rangers;
- (r) arrangements with the Commonwealth, New South Wales and affected councils for the performance of functions and the exercise of powers of wardens and rangers;
- (s) any matter incidental to or connected with any of the above.

Schedule 1—Defence land to be vested in the Trust and remain in public ownership

Note: See subsections 21(1) and 24(1) and section 63.

Defence land to be vested in the Trust and remain in public ownership		
Item	Title of Trust land site	Site description in plan lodged under the relevant law of New South Wales
1	Middle Head and Georges Heights in the Parish of Willoughby, County of Cumberland	Lots 202 and 203 in Deposited Plan 1022020; Lot 2 in Deposited Plan 541799; Lot 19 in Deposited Plan 233157; Lot 1 in Deposited Plan 831153; Lot 106 in Deposited Plan 1079507
2	Woolwich in the Parish of Hunters Hill, County of Cumberland	Lot 4 in Deposited Plan 573213 (“Horse Paddock”) and Lot 1 in Deposited Plan 223852 (“Goat Paddock”)
3	Cockatoo Island	Lot 1 in Deposited Plan 549630

Schedule 2—Other land to be vested in the Trust

Note: See subsection 21(1).

Other land to be vested in the Trust		
Item	Title of Trust land site	Site description in plan lodged under the relevant law of New South Wales
1	Middle Head and Georges Heights in the Parish of Willoughby, County of Cumberland	Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 18 in Deposited Plan 233157; Lots 104 and 105 in Deposited Plan 1079507

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Sydney Harbour Federation Trust Act 2001	2, 2001	20 Mar 2001	20 Sept 2001	
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	Schedule 2 (items 172–174): Royal Assent	Sch. 2 (item 174)
Environment and Heritage Legislation Amendment Act 2005	97, 2005	6 July 2005	Schedule 2: Royal Assent	—
Sydney Harbour Federation Trust Amendment Act 2007	151, 2007	24 Sept 2007	24 Sept 2007	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 209, 210): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 1102–1106) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 3 (items 196, 197, 343): Royal Assent	Sch. 3 (item 343)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 173–187) and Sch 14 (items 1–4): 1 July 2014 (s 2(1) items 6, 14)	Sch 14

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 78, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (s 80)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s. 3	am. No. 5, 2011; No 62, 2014
Part 2	
s. 5	am No 62, 2014
Part 3	
s. 14	am. No. 46, 2011
s. 20	am No 62, 2014
Part 4	
s. 21	am No 164, 2015
Part 6	
s. 42	am. No. 46, 2011
Part 7	
s. 54	am No 62, 2014
Part 9	
s. 59	am. No. 5, 2011
s. 60	am No 62, 2014
s. 62	am. No. 8, 2005; No 62, 2014
s. 64	am. No. 151, 2007; No 62, 2014
s. 64A	am. No. 103, 2013
Part 10	
s. 66	am. No. 151, 2007
Part 11	
s. 70	am No 62, 2014
s. 70AA	ad No 62, 2014
Schedule 1	
Schedule 1	am. No. 97, 2005

Endnote 4—Amendment history

Provision affected	How affected
Schedule 2	
Schedule 2	am. No. 97, 2005
