REVIEW OF THE NATIONAL TRUST OF AUSTRALIA (W.A.)

In accordance with section 24B of the Public Sector Management Act 1994

Mal Wauchope
Public Sector Commissioner
2 September 2011
Part A – Executive Summary
COMMISSIONER'S FOREWORD

I am pleased to present my report on the review of the National Trust of Australia (WA) (the Trust).

This review arose from a written request dated 2 February 2011 from the Minister for Heritage, the Hon John Castrilli MLA (the Minister), to the Public Sector Commissioner (the Commissioner) to consider conducting a "review into the legislative, governance and accountability arrangements of the Trust".

The Minister advised the Commissioner:

The National Trust of Australia (WA) is a public sector body established by the National Trust of Australia (WA) Act 1964. The enabling legislation is unusual in that it does not provide the responsible Minister with the normal powers of direction or the capacity to seek information. As the responsible Minister, I am concerned that this arrangement does not allow me to have adequate information about the operations of the Trust, to enable me to meet my Parliamentary duties, particularly regarding governance and accountability matters.

From the conduct of the Review I have formed the opinion that the overall operation of the Trust with regard to its current governance arrangements is generally good due to:

- an organisational commitment to providing good governance;
- general governance operating procedures being appropriate; and
- a focus on developing and improving governance procedures.

In relation to the operation of the Act, the review considered opinions from reviews and audits about governance of statutory authorities, that supports my view that the Act is inconsistent with contemporary legislative practices for statutory authorities in two key areas, those being the size of the Council and a lack of statutory authority for the Minister to direct the activities of the Trust. However, these are not considered to be an impediment to the achievement of the outcome being sought by the Minister in seeking this review and the objectives of the review Terms of Reference. It is suggested that the issues identified by the Minister could be substantially addressed through the implementation of the options recommended which do not require legislative amendments. Notwithstanding this, options are also open to the Minister to consider and further investigate in regard to amending the NTWA Act.

My key recommendations are in regard to options to address accountability and reporting relationship and arrangement issues between the Minister and the Trust. These options are for the Minister to consider, investigate (in consultation

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with the Trust), and take action where he deems it appropriate to assist him to meet his parliamentary duties:

- **Options not requiring legislative amendment**

  The Minister (in consultation with the Trust) consider the following non-legislative options, and take action where considered appropriate and necessary to assist the Minister to meet his parliamentary duties in respect to the Trust:
  
  - Review the current Communications Agreement to ensure it aligns with accountability relationships and adequately addresses needs of both parties.
  - Investigate the use of a Memorandum of Understanding between the Trust and Minister.
  - The Trust consider amending its Rules, to introduce protocols for the management and addressing of information requirements of the Minister in respect to the Trust's affairs, to assist the Minister to undertake his parliamentary duties.

- **Options requiring legislative amendment**

  Should the above options not be considered adequate, the Minister may consider investigating the following options (in consultation with the Trust and other key stakeholders), and take action where deemed appropriate to assist the Minister to undertake his parliamentary duties:

  - Amend the NTWA Act to provide power to the Minister to seek information from the Trust;
  - Amend the NTWA Act to provide power to the Minister to direct the Trust in its activities; or
  - Amend the NTWA Act to introduce alternative models (State Department or NGO) for the Trust's operation.

I have also identified areas and made recommendations where I consider practical and timely improvements could be made in regard to aspects of governance and transparency of the Trust.

By working with a sense of goodwill, the Trust and the Minister can work with a common purpose and commitment to considering and taking appropriate action on these recommendations to achieve two objectives. Firstly, to improve the Minister's ability to conduct and meet his parliamentary business and obligations in regard to the Trust, and secondly to improve aspects of the Trust's activities in the areas of governance and transparency.

M C Wachephe
Public Sector Commissioner
2 September 2011
SUMMARY OF RECOMMENDATIONS

Governance

➢ Any future action to review and amend the NTWA Act should include an assessment of the number of Councillor positions required for the Trust, and the need for representative organisations holding statutory seats on the Council.

➢ The Trust should formally document and approve all powers delegated to the CEO by the Council referred to in the Trust’s Executive Committee Terms of Reference.

➢ The Trust should implement an appropriate periodic review of its Rules i.e. its system of governance, to ensure that it remains effective in meeting its corporate and stakeholder requirements.

➢ The Trust should assess the Terms of Reference for all committees to ensure important components are included and there is consistency across key aspects of the function of each committee.

➢ The Trust should develop or obtain a business plan template specifically for acquisitions of real property.

➢ The Trust should develop an acquisition policy for real property.

➢ The Trust should develop a suitable policy and comprehensive processes for the selling or disposal of property.

➢ The Trust consider incorporating in its Rules, a requirement to provide the Minister opportunity to comment on any proposal to acquire (over a certain $ value) or sell real property.

➢ The Minister should consider the matter of providing for the appointment of an administrator to the Trust if the need arises, and should take appropriate action to address the issue either by amendment to the NTWA Act, or obtaining legal advice about other means that may be considered for the Minister to take this action if required.

➢ Councillors be reminded of their responsibilities to disclose interests when voting on matters where an interest may exist, and undertake PSC accountability and ethical decision-making training.

➢ The Trust should develop a policy on succession planning for the Council to enhance the Trust’s future viability and success.

Transparency

➢ As a government statutory authority, the Trust include in its acquisition, selling and disposal policies applying to real and personal property, reference to the Trust’s power to sell or dispose of property under s.20 of the NTWA Act.

➢ The Trust consider including a CEO’s or Chairman’s column in the Trust news periodical about the Council’s proceedings and its administration of the Trust’s business.
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- The Trust consider including greater coverage of current issues facing the Council in the standard agendas of Annual General Meetings of the Trust.
- The Trust should publish on its website relevant and important Trust documents about how it operates including strategic documents and copies of the Council and Executive Committee meeting agendas and minutes, with appropriate redactions to maintain personal privacy and necessary commercial confidentiality.
- The policy for the acquisition of property should be published on the Trust's website.
- The policy for the selling or disposal of property should be published on the Trust's website.

Accountability and Reporting Arrangements

- **Options not requiring legislative amendment**

  It is recommended that the Minister (in consultation with the Trust) consider the following options not requiring legislative amendment, and take action where considered appropriate and necessary to assist him to conduct and meet his parliamentary business and duties in respect to the Trust:

  **Communications Agreement**
  - Review the current Communications Agreement to make improvements as required, and ensure both parties understand their obligations and comply with points contained in the agreement.
  - The Minister's communication agreement with the Trust should be formally agreed with the Trust Chair and not with CEO as per the current agreement.
  - All formal communication between Minister and the Trust on matters not covered by the Communications agreement should be through the Chair.

  **Memorandum of Understanding**
  - Investigate the use of an informal agreement such as a Memorandum of Understanding (MoU) which both parties agree to abide with, to facilitate effective relationships, communications and information exchange occurring between the Minister and the Trust. The MoU should include provisions and protocols to be observed by the Trust in its communication with other Ministers, with the media and/or with other named entities on specific topics where the Minister is a key stakeholder.

  **Amend the Trust's Rules**
  - The Trust (in consultation with the Minister) consider amending its Rules, to introduce protocols for the management and addressing of information requirements of the Minister in respect to the Trust's affairs, to assist the Minister to meet his parliamentary duties. The
amendment should address matters such as protocols to be observed by the Trust in its communication with other Ministers, with the media and/or with other named entities on specific topics where the Minister is a key stakeholder.

**Options requiring legislative amendment**

Should other options not be considered sufficient, the Minister may consider investigating the following options (in consultation with the Trust and other key stakeholders) that would require legislative amendment, and take action where he deems it appropriate to assist him to meet his parliamentary duties:

- Amend the NTWA Act to provide power to the Minister to seek information from the Trust;
- Amend the NTWA Act to provide power to the Minister to direct the Trust in its activities; or
- Amend the NTWA Act to introduce alternative models (State Department or NGO) for the Trust's operation.
Part B – Detailed Report
1.0 INTRODUCTION

The Australian National Trust movement is comprised of eight autonomous, organisations from each State and Territory, with a common objective of conserving Australia's heritage. The movement was established in New South Wales in 1945 with other States establishing National Trust organisations throughout the 1950's and 60's. The Northern and Australian Capital Territories were the last to establish a National Trust which occurred in 1976.

The Australian Council of National Trusts is the coordinating body of the Movement, and was formed in 1965. Although State and Territory Trusts are members of the Council, each Trust is an autonomous entity and responsible for the management of its own affairs. An overview of the State and Territory Trusts is detailed in Appendix 3.

The National Trust of Australia (WA) (the Trust) was established in 1959 and the National Trust of Australia (WA) Act 1964 was assented to on 14 December 1964, and proclaimed on 1 February 1965, when the Trust was established as a Statutory Authority. The Trust is a member focussed, not-for-profit organisation that works to raise knowledge, awareness, understanding and commitment to Western Australia’s natural, Aboriginal and historic heritage. The Trust achieves this objective through the conservation and interpretation of heritage places it manages on behalf of the community and government of Western Australia.²

The Minister for Heritage, the Hon John Castrilli MLA (the Minister) is responsible to Parliament for administering the NTWA Act.

The review arose from advice to the Public Sector Commissioner from the Minister for Heritage about concerns that the NTWA Act does not provide the responsible Minister with the normal powers of direction or the capacity to seek information to meet his parliamentary duties. The Minister requested that the Commissioner consider “conducting a review into the legislative, governance and accountability arrangements of the Trust”.

2.0 BACKGROUND

2.1 Terms of Reference

To review:

I. The operations of the National Trust of Australia (WA) with regard to its current governance, accountability and reporting arrangements, and advise of any practical improvements which might be made to these arrangements.

II. The roles and responsibilities of and between the National Trust of Australia (WA) and the Minister responsible for the administration of the National Trust of Australia (WA) Act 1964 (the Act), and the extent of any arrangements in place to ensure the provision of information regarding the operations and governance of the National Trust of Australia (WA) to the Minister, to enable him to conduct his parliamentary business concerning his responsibility for the Act.

III. The extent, if any, to which the provisions of the Act could be amended to better facilitate the capacity of the Minister to receive timely advice regarding the operations and governance of the National Trust of Australia (WA).

2.2 Scope of the Review

The review examined the following areas:

- Governance\(^ \text{3} \), accountability and reporting arrangements of the Trust, and the roles and relationships between the Trust and the Minister for Heritage.

- The powers and obligations conferred to the Trust and the Minister, by the NTWA Act.

\(^3\) Macquarie Dictionary noun 1. government; exercise of authority, control. 2. method or system of government or management.
2.3 Approach to the Review

The approach in conducting the review included:

- Interviews held with the Minister for Heritage and relevant ministerial staff from his office.
- Interviews held with the National Trust Chairperson, Deputy Chairperson, President, a number of Councillors, the Chief Executive Officer, Deputy CEO and Director of Finance, Audit and Administration.
- Analysis of data, documents and information obtained from the Minister and his staff and the National Trust.
- Assessment of the NTWA Act and other legislation involving Western Australian and other jurisdiction statutory authorities.
- Assessment of information and reports concerning 'better practice' in governance for government statutory authority councils, boards and committees.
- Assessment of relevant information from the Public Sector Commission 2010 Annual Agency survey responses received from the National Trust.

2.4 Previous Reviews

Since the inception of the NTWA Act the Trust has been subject to a number of reviews looking at various facets of the organisation including:

- 'A Report on The Heritage of WA Act and The Role of the Heritage council and The National Trust of Australia (WA) Act and The Role of the National Trust with special reference to The 'Pendal Select Committee Report' (1995)
- National Trust Review 2000 – John Pritchard
- Report of the Review of the National Trust of Australia (WA) 2002

2.5 Legislative and Functional Context

The National Trust of Australia (WA)

The Trust is a member based, not-for-profit organisation and has a paid membership base comprising of approximately 5500 to 6000 members.

The Council of the National Trust of Australia (WA) (the Council) is established under section 7 of the NTWA Act, and is responsible for the administration, management and conduct of the affairs and business of the Trust. Section 7 (2) of the NTWA Act provides the Council with the power to:

... exercise and discharge the powers, authorities, duties and functions that are conferred and imposed upon the Council or The Trust by or under this or any other Act, and the Council may do and perform all such acts.
and things as are necessary or convenient for giving effect to the objects of The Trust

The Hon John Cowdell AM is the Chair of the Council, Mr Max Kay AM CIT is the Premier’s nominee to the Council and President of the Trust, and Mr Thomas Perrigo is the Chief Executive Officer (the CEO) of the Trust. A chart of the Trust’s organisational structure can be found at Appendix 4.

The Trust is established under section 4(1) of the NTWA Act as a body corporate with perpetual succession.

Section 4(2) of the NTWA Act states that the Trust:

(a) shall have a common seal;
(b) has, subject to this Act, power to acquire, hold and dispose of real and personal property;
(c) has power to borrow money either with or without security;
(d) may sue and be sued in its corporate name; and
(e) is capable of doing and suffering all that bodies corporate may do and suffer.

The NTWA Act gives the Trust the following powers:

- to accept any gift of real or personal property (section 18).
- with the consent of the Governor, to sell, exchange or dispose of any real or personal property that is vested in it, that it adjudges as unfit or not required for the objects of the Trust (section 20).
- to appoint employees to carry out the functions of the Trust, and may engage and remunerate professional persons necessary to carry out the objects of the Trust (section 22).
- to mortgage, charge, lease or grant a licence for any property, and may enter into any guarantee. However, the Trust cannot borrow any money, or mortgage or charge any property without the prior written consent of the Minister (section 21).


The Trust's annual report 2009/10 states it to be "a "Trust" for the community and government", "a custodian of heritage places for the community of Western Australia" and manages this function with the assistance of volunteers.

The Trust advised the Review its three major service areas are:

1. Conservation of historic Heritage
2. Interpretation, Education and Learning and Heritage Awareness
3. Conservation of Natural Heritage
The National Trust in other Australian Jurisdictions

The enacting legislation of each State and Territory trust specifies the powers and obligations of both the trust and the relevant Minister. Each state and territory has a trust as a separate legal entity in each jurisdiction. The scope of the powers and obligations specified in the legislation varies in each state and territory, with some Acts conferring little or no power to the Minister. The Australian Council of National Trusts (ACNT) was formed in 1965. It represents the interests of the National Trust at the federal level, provides a forum for information exchange and increasingly coordinates the work of the constituent bodies.

In 1990, the National Trust of Australia Act (NSW) 1960 was repealed by the National Trust of Australia (NSW) Act 1990. The object of the current NSW Act was to restructure the National Trust of Australia (NSW), to increase the flexibility of the Trust's power to deal with its assets, and to increase its financial accountability. Section 34 of the Act confers to the relevant NSW Minister the power to direct the Auditor-General to inspect and report on the books and accounts of the Trust. Also, pursuant to section 31, the Minister has the power to direct the transfer of protected property, in the case that the Trustee wound up. In addition to these new ministerial powers, section 35 compels the Trust to provide the Minister with the annual reports and financial statements of the Trust within 30 days after its Annual General Meeting, which was reduced from three months under the repealed Act.

Following the changes made in New South Wales, Queensland and Tasmania also amended and updated their enacting legislation to allow for increased financial accountability of their respective trusts, and increased ministerial intervention in the operations of the trust. The National Trust of Queensland encountered some governance problems in the late 1990s. During this time, it was identified that the Act failed to confer to the Minister the power to intervene and assist the Trust. Consequently, Part 3 was inserted into the National Trust of Queensland Act 1963 on 19 December 2001, which covered, amongst other things, appointment, functions and powers of the Administrator.

Similarly, the National Trust of Australia (Tasmania) Act 1975 was amended by the National Trust of Australia (Tasmania) Amendment Act 2004, which inserted Administrator provisions into the Act, to address the corporate governance problems within the National Trust of Australia (Tasmania). Subsequently, the Trust entered into a term of Administration between 20 December 2004 and 28 December 2006. On 22 December 2006, The National Trust of Australia (Tasmania) Act 1975 was repealed by the National Trust Act 2006, which refined the Administrator provisions, and introduced s.48 which made provision for the winding up of the Trust, if the need arose.
3.0 GOVERNANCE OF THE TRUST

A review of corporate governance of statutory authorities conducted in the Commonwealth government found that:

"...statutory authorities often operate with a greater level of separation. It is this separation, or 'independence', that creates the need for robust governance structures. The need for governance increases when independence is combined with power."

Governance of the Trust is primarily established through and structured around provisions within the NTWA Act, which include:

- Establishment of the Trust (section 4)
- Objects of the Trust (section 5 and the Schedule)
- The Council of the Trust (section 7)
- The Constitution of the Council (section 10)
- Power to appoint Executive Committee (section 15)
- Rules of the Trust (developed with respect to the matters described under section 27)

Interviews held with the Trust Chairperson, President, and senior members of the Council and administration, indicate that the Council and organisation view and address the subject of governance for the Trust with a high level of importance. The importance with which the Trust approach governance is reflected in its recently released 'National Trust Strategic Plan 2011-2016' which states as one of its strategic objectives under the heading 'Governance':

"To demonstrate best practice processes in our culture, systems and skills enabling more efficient and effective operations as a Trust for government, the community and stakeholders".

The Trust's 'Annual Report 2009/10' also lists "Sound Governance" as one of the values of the organisation with the following objectives:

- To maintain diverse professional and corporate expertise and best practice procedures for the strategic governance of the National Trust; and
- To sustain the founding vision of the National Trust, through engagement of members, stakeholder and government in common purpose through strong co-operative governance.

The Australian Standard 'Corporate governance – Good governance principles' AS 8000-2003 states that it "provides a blueprint for the development and implementation of a generic system of governance suitable for a wide range of
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entities", including Government entities with governing boards. The Standard also states "while there is no single model of good corporate governance, there are a number of common elements that underlie good corporate governance" and lists certain "broad principles that entities may wish to incorporate into their governance policy, practices and procedures".

In addition to the AS 8000-2003, there are various other formats developed as guides for good governance (refer to Appendix 5) which cover the key themes seen as pivotal to providing good governance by boards, committees and councils.

The Review assessed the Trust's application of governance against relevant parts of the:

- AS 8000-2003 principles;
- Public Sector Commission principles of good corporate governance6 for WA public sector boards and committees; and
- The former Office of the Public Sector Standards Commissioner's 'Good Governance Guide'.

3.1 Council and the Trust's committees

Background

The structure and composition of government statutory authority governing bodies are important aspects of the overall governance systems by which they operate. Matters such as their size and structure must be considered, balanced and addressed with regard to factors and requirements of independence and appropriate representational diversity, skills and experience required to maximise the achievement of corporate responsibilities. Elements to ensure a proper structure and composition for effective governance are in place include:

- having an open, transparent and proper process for nominations and appointments to positions;
- following the process for nominations and appointments;
- a succession plan to ensure organisational continuity; and
- appropriate committees comprised of people with the necessary skills to support the primary governing body.

The protocols for the election and appointment of Councillors and Officers of the Trust are described in sections 36-50 of the 'Trust Rules' amendment 7. The election of Councillors is managed by the Western Australian Electoral Commission (the Commission) as described in Section 36 (c) of the Trust Rules and elections are conducted in accordance with the "Standard Election Rules for Non-Parliamentary Postal Elections" as prescribed by the Commission.

6 Public Sector Commission 'Good Governance for WA Public Sector Boards and Committees'
Under section 15 of the NTWA Act, the Council may appoint an Executive Committee and delegate any of its powers under the Act to any committees appointed by the Council. The Trust's committees are established by the Council and roles on these committees are filled on an honorary basis. The committees provide the organisation with a significant base of knowledge and expertise to support the Council and Executive Committee. The Trust has the following Committees\(^6\) (listed below) to support the Council:

- Executive Committee
- Art Deco Committee
- Built Environment Working Committee
- Finance and Audit Committee
- Classification Standing Committee
- Defence Heritage Committee
- Golden Pipeline Council
- Heritage Bank

The Executive Committee ToR states that it is responsible for administering and managing the affairs of the Trust, except those under delegation to the CEO.

3.1.1 Constitution of the Council

The effectiveness of governing bodies can be influenced by factors including:

- the complexity of the business governed;
- size of the governing body;
- relevant skills, competencies and experience of members of the board/council; and
- behavioural matters such as the levels of critical thinking and level of engagement demonstrated by each member.

There is also no established standard or agreed approach for determining the appropriate number of representative positions for a governing board or council. The size of government statutory councils, committees and boards is generally determined by legislative provisions or consideration of the number of positions required to provide effective governance, taking into account factors such as the skills and experience required and availability of people to take up positions.

In regard to the Council, section 10 of the NTWA Act states the Council shall consist of 16 Councillors elected in accordance with rules from amongst the members of the Trust, and 9 Councillors appointed by the Trust on the nomination of various positions and bodies.

\(^6\) National Trust of Australia (WA) Annual report 2009-2010
Currently the Council includes eight Councillors appointed by the following nominating organisations named in s.10 subsection (b).

(i) one shall be appointed on the nomination of the Premier and Treasurer of the State;

(ii) one shall be appointed on the nomination of The Senate of the University of Western Australia constituted pursuant to the University of Western Australia Act 1911;

(iii) one shall be appointed on the nomination of the body known as The Royal Western Australian Historical Society (Inc.);

(iv) one shall be appointed on the nomination of the body known as Royal Australian Institute of Architects (Western Australia Chapter);

(v) one shall be appointed on the nomination of the body known as The Royal Society of Western Australia

(vi) one shall be appointed on the nomination of the body known as The Country Women's Association of Western Australia (Inc.);

(vii) one shall be appointed on the nomination of the body known as The Tree Society (Inc.)

(viii) one shall be appointed on the nomination of the body known as the Western Australian Local Government Association; and

(ix) one shall be appointed on the nomination of the body known as The Western Australian Tourist Development Authority

All positions held on the Council (and its committees) are filled on an honorary non-paid basis, and significant knowledge, expertise and time is provided by the people who hold these positions to assist the Trust to achieve its goals.

In certain circumstances too many members of a governing body can contribute to dysfunction and inertia in decision-making, while in other situations too few members can limit a decision-making body's effectiveness, and threaten its operations, financial viability and existence through a lack of experience, skills and expertise.

The Minister's office expressed the view that it considered the existing number of the Trust's Councillors was high and possibly outdated for a contemporary statutory authority governing body, and may contribute to inefficiencies in governance of the Trust.

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7 Research by the Review found that it became usual for the Premier of the day to not hold the Treasury portfolio from 16 February 2001

8 The Review was advised by the Trust that 'The Tree Society' no longer exists and has no representation on the Council.
The Select Committee (the Select Committee) on Heritage Laws appointed in September 1993 conducted an inquiry over 15 months on the operation and effectiveness of both the Heritage of Western Australia Act 1990 and the National Trust of Australia (WA) Act 1964. The Select Committee tabled its report in parliament on 23 January 1995. The committee observed that it was "concerned about the unwieldy size of the Council (25 members) and considers that some of the categories for appointed members may no longer be relevant". The Select Committee also recommended that the Trust Council should consist of 11 elected members and 8 councillors appointed by the Trust on nomination of certain bodies i.e. the number of councillors would be reduced by 6.

Another report by the then Minister for Heritage Richard Lewis MLA based on the requirements of sections 84 (1) (2) of the Heritage of Western Australia Act 1990 and following direction by the Select Committee on Heritage Laws to report on the actions proposed to be taken by the government with respect to the recommendations of the Select Committee on Heritage Laws Report - 23 January 1995 recommended:

Accordingly it is also recommended that there be no major alteration to the Trust Act. The only matter requiring statutory amendment is the composition of the Trust Council.

The rationale for recommending amendment to the composition of the Council was stated as:

when the Trust was established there was no government heritage body—hence the tendency when preparing the Bills to establish the Trust of including a number of Government and other bodies. This is no longer the case. Now there is an established Government heritage body the time has probably come for the Government and other organisations to withdraw from having statutory seats on the Trust Council.

A report of the Auditor General of Western Australia also stated in regard to the number of members on governing boards and the representational status of some board members:

Representational members have a value on advisory boards, but their presence on governing boards is questionable, and recommended that "legislation establishing a new board or reconstituting an existing one should ensure that membership is on the basis of relevant expertise and experience rather than on representational status.

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9 The Select Committee on Heritage Laws Report - 23 January 1995
11 Auditor General of Western Australia - report No 9 November 1998
The Review noted that in regard to the constitution of the Council and the currency of the NTWA Act, section 10 (b) (i) and (vii) are examples of aspects of the legislation that could be revised if the NTWA Act were to be reviewed. For example, from approximately 16 February 2001 it has become usual for the Premier of the day to not hold the Treasury portfolio, and the current nominee referred to in s.10 (b) (i) is not actually nominated by the Premier and Treasurer, but by the Premier alone. In addition to this, the Review was advised that the W.A Tree Society no longer exists and therefore is not represented on the Council as described under s.10 (b) (vii).

Contemporary practice for the size of statutory authority boards and councils suggest the number of councillors of the Trust would appear excessive. For example, the Swan River Trust Board has seven members, the W.A Art Gallery Board comprises eight members and the W.A Museum is governed by a Board of seven Trustees. The Review was advised by the Council Chairperson, President and some Councillors (including two former Chairpersons), that the number of Councillors on the Trust’s Council was viewed as a strength of the Council, in that it provided a depth of experience and knowledge not generally found in a not-for-profit entity.

While the review did not find that the current number of Councillors is having an adverse effect on the operation of the Council, contemporary practice in this area would suggest any future action to review the NTWA Act, should include an assessment of the number of Council positions required and the need for what, if any, representative organisations should hold statutory seats on the Council.

**Recommendation**

Any future action to review and amend the NTWA Act should include an assessment of the number of Councillor positions required for the Trust, and the need for representative organisations holding statutory seats on the Council.

**3.1.2 Delegated powers**

All of the Trust’s committees and their members are appointed by the Council\(^\text{12}\). The Executive Committee plays a pivotal role in the proper functioning of the Trust and its general role under its terms of reference is to “administer and manage the affairs of the Trust except those under delegation to the CEO”. The Executive also has specific functions including to review the NTWA Act, Rules and By laws, accept any gift of any real or personal property and "sell, dispose of lease or grant any license over any real or personal property of the Trust". The Executive Committee is comprised of Chairman of Council; Deputy Chair of Council; President of the Trust, Vice President of the Trust and Chairman of the Finance and Audit Committee and the CEO is an ex-officio member of the Executive.

\(^{12}\) Trust Rule 55.
Clear and documented lines of responsibility, accountability and delegated power are important aspects for an organisation to have in place to assist in its proper, effective and efficient functioning. A lack of adequate guidance on delegated powers can often lead to misunderstandings between parties and the potential for incorrect and unintentional use of powers requiring corrective action. For probity and business continuity reasons, an organisation should not rely on unwritten understandings about responsibilities and delegated powers between the governing body and administration. Where a responsible Minister has no power to direct, the need for well articulated delegation register is heightened.

A report\textsuperscript{13} of the Auditor General of Western Australia stated:

\begin{quote}
\textit{The failure of an agency to clearly define the role of the board and management can lead to conflict in decision-making and frustration among board members.}
\end{quote}

On the information provided to the Review, the Trust currently does not have a formal documented list of powers delegated to the CEO, as referred to in the Executive Committee terms of reference. It is suggested the Council formally document and approve all powers delegated to the CEO by the Council to avoid any ambiguity or misunderstandings between the Council, Executive and the CEO.

Recommendation

The Trust should formally document and approve all powers delegated to the CEO by the Council referred to in the Trust’s Executive Committee Terms of Reference.

3.1.3 Succession Planning

Succession planning is an important part of a governing body’s responsibility to effectively plan for the future of the organisation when key people leave.

A report\textsuperscript{14} of the Auditor General of Western Australia stated:

\begin{quote}
\textit{An effective governing board needs members offering an appropriate blend of qualities, skills and experience. The board is the accountable authority and should be the chief driving force behind the agency.}
\end{quote}

The Trust’s current Council membership is diverse and contributes significantly to the effective governance of the organisation. The Council and Executive Committee, the primary decision-making bodies of the Trust, include people with extensive experience, backgrounds, distinguished service and high level positions held in tertiary institutions and business in the areas of law, accounting,
finance, architecture, history, planning, local government and other governing councils, boards and committees.

The Review was advised by Councillors interviewed that no formal succession plan is in place to identify the skills required for the Council and Executive Committee. The Review recognises the current Council with its significant experience of present councillors, in representation on governing boards and councils, is aware of planning for the future governance of the Trust, particularly for the filling of key positions within the Council and Executive Committee. However, there is no documented approach to how the Trust should consider and address this issue for the reference and benefit of future members of the Council and the ongoing sustainability of the Trust.

The Review suggests the Council consider developing a policy on succession planning to enhance the Trust's future viability and success. This should cover matters such as what skills are important for the Council, the importance of rotation of people through positions, mentoring and training required to develop skills required in people for holding key positions within the organisation.

**Recommendation**

The Trust should develop a policy on succession planning for the Council to enhance the Trust's future viability and success.

### 3.2 Governance procedures

**Background**

Approaches to how governance is undertaken in both private sector and government organisations have evolved and generally improved over recent decades. These changes have been mainly in response to significant events such as the stock market crash in 1987, high profile collapses of large financial and corporate institutions and the more recent global financial crisis, which resulted in increasing demands from governments, corporate regulators and the public for greater accountability and transparency across private and public sector bodies. These demands have translated to the ongoing assessment and improvement of corporate governance practices at private and public levels, and the enactment of legislative instruments such as the 'Sarbanes-Oxley Act', a United States federal law that established new and increased standards for all U.S. public company boards, management and public accounting firms.

The effectiveness of any governance body is underpinned by comprehensive and clear principles, policies, procedures, rules and information that assist in managing the demands of providing good governance and management of the organisation.

**3.2.1 The Trust Rules**

Under section 27 of the NTWA Act, the Trust may make rules with respect to:

(a) regulating the affairs, business and management of The Trust;
(b) the method and time of convening, holding and adjourning meetings of The Trust, the voting at those meetings, including postal and proxy voting, the conduct and record of the business of The Trust, the quorum at those meetings and all matters of or incidental to the proceedings at those meetings;

(c) the mode of election and nomination of a President, Vice Presidents, Secretary and Treasurer of The Trust and the elected councillors;

(d) casual vacancies in the office of President, Vice President, Secretary or Treasurer of The Trust;

(e) regulating the admission, resignation and expulsion of members of The Trust and the types and classification of those members and the levying of subscriptions on those members;

(f) all matters that are required or permitted by this Act to be prescribed by the rules or are considered necessary or convenient by The Trust to be prescribed for the purpose of giving effect to this Act, not being matters for and with respect to which by-laws may be made.

The Trust's current rules 'Trust Rules Amendment No 7' (the Trust's Rules) cover the following topics:

- Members
- Donations and Subscriptions
- General Meetings
- Votes of Members
- Election and Appointment of Councillors
- Appointed Councillors
- Elections of Officers
- Patrons
- Proceedings of the Council and of Committees
- Finance
- Contracts with the National Trust
- Notices
- Staff
- Indemnity
- Alteration of Rules

The Review found that the Trust's Rules address the provisions of section 27 of the NTWA Act, and the Trust has a strategic focus and a good understanding of
its corporate obligations and has developed or is party to other instruments and processes to assist it to function effectively and efficiently. These include:

- A recently adopted (February 2011) National Trust Strategic Plan 2011 – 2016, which is an example of the organisation’s strategic approach and commitment to proper and effective governance. The plan states that the Trust is also “undertaking a complete review of its asset portfolio. It remains the intent of the National Trust to obtain, from the State Government, formal approval and implementation direction for the National Trust Heritage Bank program. As part of the review, the National Trust will recommend to the Government a more effective and efficient transfer of heritage places from state agencies to the National Trust”.

- A signatory to a Communications Agreement (Appendix 7) under Section 74 of the Public Sector Management Act 1994 for the manner and handling of all communications and contact undertaken between the Minister for Heritage’s ministerial officers and employee of the Trust.

- Tracking sheet for Ministerial communications.

- By-laws pursuant to section 26 of the NTWA Act.

- Terms of Reference developed to provide a reference point and guidance for the following Council committees:
  - Executive Committee
  - Finance and Audit Committee
  - Built Environment Working Committee
  - Classification Standing Committee
  - Art Deco Committee
  - Defence Heritage Committee
  - Golden pipeline Committee
  - Heritage Bank Board
  - Railway Heritage Committee

- A list of all elected and appointed Councillors and their expiry of term date.

- A document listing the “Duties of the President and Chairman”.

- A Job Description Form for the Chief Executive Officer.

- Policies and documents relating to portfolio development

- Policy – Declarations of Interest or Partiality

- Risk management policy and procedures

- Customer Service Charter

- Code of Conduct
The Review was advised by the CEO that the Trust had benefited from a business rigour perspective as a result of being accountable to various requirements of public sector legislation, policies and procedures. The Review also noted that over the last 3 financial years the Trust has received advice from the Office of the Auditor General that it was assessed as achieving ‘better practice’ for managing its financial reporting requirements.

Overall, the Review considers the Trust has strived to continually improve its corporate systems over recent years, and generally has appropriate methods and processes in place to support the effective governance of the organisation. This has been achieved on an ongoing basis through the various principles, policies, information and procedures developed and adopted by the Trust since its inception.

The Review suggests the following matters require consideration and appropriate action by the Trust to further improve the governance of the Trust.

3.2.2 Review of governance processes

The Australian Standard “Good Governance Principles” AS8000-2003 section 2.4.4 ‘Review’ states:

A review of the elements of the system of governance is necessary on a regular basis to ensure that it remains effective in meeting shareholder and/or other stakeholder requirements

The Review noted the Trust’s Rules were last amended on 10 November 2004. While the Review acknowledges that amendments should only occur when required, it suggests that it would be good practice for the Trust implement a periodic review of the Trusts Rules i.e. its system of governance, to ensure that it remains effective in meeting its corporate and stakeholder requirements.

Recommendation

The Trust should implement an appropriate periodic review of its Rules i.e. its system of governance, to ensure that it remains effective in all meeting its corporate and stakeholder requirements.

3.2.3 Committees terms of reference

The Review observed that while all committees of the Trust have terms of reference (ToR), and these are generally adequate for the purpose intended, their structure formats are not consistent, and some do not contain important information required for the proper functioning of a committee. For example, the Review observed the headings of the various ToR are not consistent such as the Built Working Environment Working Committee covers the required numbers for a quorum, however a number of other committees don’t, including those of the Executive Committee and Finance and Audit Committee.

The Review considers it would be beneficial to have a standard approach to the structure of the committee ToR, as this would assist in ensuring the committees are aware of and address key procedural matters in a more consistent manner.
This would also provide for easier reference, understanding and use by the current and future members of the committees.

**Recommendation**

The Trust should assess the Terms of Reference for all committees to ensure important components are included and there is consistency across key aspects of the function of each committee.

**3.2.4 Managing Conflicts of Interest**

A report[^15] of the Auditor General of Western Australia stated:

- Some boards still include members who are appointed as representatives of external stakeholders. There is clear potential for conflicts of interest to arise for such members.
- The Public Sector Management Office's 1997 guide to board membership 'Getting on Board' states: 'Duty of loyalty to the board overrides any responsibility a member may have to represent the interests of a particular group or sector.'

This guideline is supported in law through the *Statutory Corporation (Liability of Directors) Act 1996*.

The Trust has in place a policy covering "Declarations of Interest or Partiality" that provides direction to councillors for dealing with possible conflicts of interest in undertaking their role as a councillor. This policy also requires councillors to sign an undertaking they will not vote on any matter in which they have declared an interest or partiality, except by leave of the Chairman and Council.

The review noted that the Trust's Code of Conduct also has sections dealing with and providing guidance for Council and committee members on managing conflicts of interest and private interests that may conflict with their roles within the Trust.

Due to the number of councillors and their professional positions held, backgrounds and interest in heritage issues coupled with the power of the Trust to acquire and sell real and personal property and procure professional services, the Review suggests councillors be reminded of their responsibilities to disclose interests when voting on such matters.

**Recommendation**

Councillors be reminded of their responsibilities to disclose interests when voting on matters where an interest may exist, and undertake PSC accountability and ethical decision-making training.

[^15]: Auditor General of Western Australia – report No 9 November 1998
3.2.5 Acquisitions, sales and disposals of property

The NTWA Act contains the following references to the Trust's ability to acquire, sell and dispose of property:

- Section 4 (2) provides the Trust with the power to acquire, hold and dispose of real and personal property.
- Section 18 provides the Trust with the power to accept any gifts, whether by will or inter vivos, of any real or personal property.
- s.20 (refer to Appendix 6) provides the power for the Trust where it adjudges any real or personal property to be unfit or not required for the objects of the Trust to sell or dispose (with the consent of the Governor) of certain property of the Trust.
- the objects of the Trust set out in the Schedule include reference under section (w) for the Trust to "acquire by purchase, exchange, gift, devise, bequest, lease, hire or otherwise any real or personal property in furtherance of the objects and purposes of The Trust".
- the objects of the Trust set out in the Schedule also include reference under section (x) to the Trust being able "To sell, lease, exchange or otherwise dispose of any real or personal property of The Trust".

Acquisitions of Property

Concerns were raised with the Review about the business rigour and thoroughness of aspects of processes used by the Trust on some occasions in regard to the purchase, acquisition, and transfer of property to the Trust.

The Minister is of the view that some benefactors of property to the Trust may not be aware that what they are gifting, selling etc to the Trust is not actually being vested to the government ie they are not aware the Trust is not part of government and it is not accountable to the Minister, and he has no power in relation to the conduct of the Trust.

Examples provided by the Minister about his concern with Trust processes for sales and acquisitions included; where a submission by the Trust to Cabinet seeking approval for the sale of land revealed the land to be sold was crown land and not property the Trust had the right to sell, Cabinet submissions made through other Ministers without the prior knowledge of the Minister for Heritage, and purchasing decisions being made without a proper business plan e.g. not including details about the funds needed to maintain a property that may result in additional unforeseen funding requests to the government that the Minister may have to justify.

The Trust provided the Review with an overview of the evolution of the "National Trust Portfolio Development and Approval Process", this details the Trust's view of its mandate for the Portfolio Development and Approval Process as:

The National Trust of Australia (WA) operates as an independent statutory organisation providing heritage services to whole of government and the community. The National Trust has a unique, specialised and
differentiated role within Western Australia and as such, its activities are complementary to other agencies (regulatory, planning, works and funding) that have dealings with heritage issues. Through its legislation, the National Trust is able to operate as a "trust" for both government and the community to retain significant heritage assets in public ownership for both present and future generations.

The Trust further advised the review that its approach for acquisitions from 2010 onward is:

Ongoing acquisitions in accordance with the mandate and heritage philosophy of the National Trust are considered on a case by case basis by the Council. The risk assessment processes developed in 2006 - 2009 continue to be applied by the Finance and Audit Committee and Executive before further consideration by Council. All decisions are recorded in the Minutes and Annual Report in accordance with whole of government accountability, reporting and audit responsibilities.

As part of the 2011 - 2016 Strategic Plan, the National Trust is undertaking a complete review of its asset portfolio. It remains the intent of the National Trust to obtain, from the State Government, formal approval and implementation direction for the National Trust Heritage Bank program. As part of the review, the National Trust will recommend to the Government a more effective and efficient transfer of heritage places from state agencies to the National Trust.

The Review was also informed by the Trust that when considering and assessing the suitability and viability of acquiring property it refers to and utilises:

- The Department of Treasury and Finance business plan template; and

The Review suggests that to ensure the Council and Trust properly and completely address all the relevant business and legislative aspects for property acquisitions it would benefit from developing or obtaining for use a purpose developed business plan template specifically for assessing acquisitions of real property. This document would include important aspects of the capital acquisition planning and decision-making process for a statutory authority including:

- a Statement of Need
- Supporting data and information
- Relationship to the strategic plan
- Consideration of options
- Legal considerations
- Financial evaluation of options.
The Review noted the Trust has a 'Collections Policy for Moveable Cultural Heritage Material' but does not appear to have a similar policy covering acquisitions of real property. While the Trust's Strategic Plan 2011-2016 makes reference to an aim to "refine portfolio management" it does not appear to include an initiative to develop an acquisition policy. It is suggested the Trust develop an acquisition policy for property.

Recommendations

i. The Trust should develop or obtain a business plan template specifically for acquisitions of real property.

ii. The Trust should develop an acquisition policy for real property.

iii. The policy for the acquisition of property should be published on the Trust's website.

Sale or disposal of property

Where The Trust determines any real or personal property that is vested in it, is unfit or not required for the objects of The Trust it may under s.20 of the NTWA Act, with the consent of the Governor, sell, exchange it for any other property or dispose of it. The Review considers it is imperative for the Trust, the Minister and the government that the Trust have a suitable policy and comprehensive processes for the selling and disposal of property.

The Trust advised the Review that its current policy for the sale or disposal of certain property is a reiteration of s.20 of the Act, and there are three components also utilised in any disposal, which have been included in the application of s.20 during the Trust's history. These components are:

Any heritage place sold must have either a heritage agreement with the Heritage Council of Western Australia or be on the State Heritage Register.

Profits from any disposal must be re-invested into the conservation and interpretation of heritage assets.

Whenever possible, the re-investment of capital assets should be re-directed into related projects or areas from the property or object's area.

In relation to the process used for the disposal of property through s.20 of the NTWA Act, the Trust further advised the Review:
The request for disposal of property under section 20 is always a matter of extensive consultation and discussion by the Trust’s Administration, Executive and Council.

Any disposal of property is subject to approval by the Governor through an Executive Council Minute. This also requires the approval of both the relevant Minister and the Premier.

The National Trust in Western Australia is the only Trust in Australia that requires the Governor’s approval through an Executive Council Minute. From the Trust’s perspective it reinforces the fact that whilst independent of direct Ministerial control, the National Trust is accountable through the Minister to Parliament and the implementation of section 20 through the Minister, the Premier and the Governor ensures this accountability.

The Trust ensures places are permanently protected by either a heritage agreement or permanent registration with the Heritage Council of Western Australia.

The Trust disposal of some objects of its collection is considered one of the best examples of good Governance and best practice in Australia and is often used in training and educational institutions as an example of “best practice”.

Profit generated is re-invested into other capital works either associated with regional Trust properties or existing collections.

This process was developed to ensure that any perceptions the National Trust was selling places or objects to fund normal recurrent operations was demonstrably incorrect.

This practice is against the advice of State Treasury who have repeatedly encouraged the Trust to sell properties to fund recurrent operations whilst the current Government asset disposal process allow state agencies to utilise proceeds for recurrent processes, the National Trust will not.

The Review was also informed by the Trust that in approximately the last 20 years of its existence s.20 has been used for the sale of the Old York Hospital (1998), the de-accessioning of some 6000 objects of the Trust’s collection (2005) and the sale of the Old Dongara Flour Mill (2006). The Trust indicated these sales were in part due to matters including a lack of economic viability in retaining the property, a lack of or insufficient resources to maintain the properties and better conservation outcomes achieved through private investment.

The Review became aware of a Trust property that was possibly sold outside the provisions stated within s.20 of the Act i.e. without approval by the Governor through an Executive Council Minute. In regard to this matter, the Trust advised the Review s.20 was not used however:

The Commonwealth Government formal agreement with the National Trust of Australia (WA) for this Bush Bank programme makes no reference to Section 20; and
The National Trust of Australia (WA) also had clearance from the State Solicitor’s Office through which the official transaction was made (document attached). The National Trust of Australia (WA) was of the belief that all due diligence had been observed and protocols and processes carried out in accordance with the Bush Bank Commonwealth Agreement and supported by the State Government.

The Review considers the onus of correctly selling or disposing of property under the provisions of the NTWA Act by the Trust, lies with the Trust, and it should therefore in all circumstances where it is proposing to sell or dispose of property satisfy itself that s.20 does not apply. The Review considers this example highlights the need for the Trust to have a suitable policy and comprehensive and cohesive processes for the selling or disposal of property.

The Minister is able to place any relevant conditions on what he takes forward to Cabinet or into the budget process. The Minister could, for example, require Trust submissions to be made in accordance with a business plan template or the Department of Treasury and Finance Strategic Asset Management Framework.

Recommendations

i. The Trust develop suitable policy and comprehensive and cohesive processes for the selling or disposal of property.

ii. The policy for the selling or disposal of property should be published on the Trust’s website.

iii. The Trust consider incorporating in its Rules, a requirement to provide the Minister opportunity to comment on any proposal to acquire (over a certain $ value) or sell (before a Cabinet Submission is prepared and presented to him) real property.

Transparency of Processes

From the information assessed the review is not aware of any reference in the Trust’s policy or processes in regard to it informing persons or parties proposing to sell, bequest or gift etc property to the Trust of its power under s.20 of the NTWA Act to sell or dispose of property vested in it. The Trust advised the Review that it does not consider accepting properties to its property portfolio where conditions are attached. However, the Review considers that in the interests of openness and transparency, any person or party that is considering selling, gifting, etc property to the Trust should at the outset of negotiations be informed about the Trust’s power to sell or dispose of property under s.20.

Recommendation

As a government statutory authority, the Trust include in its acquisition, selling and disposal policies applying to real and personal property, reference to the Trust’s power to sell or dispose of property under s.20 of the NTWA Act.
3.2.6 Administration of the Trust’s assets

The Review noted that some State and Territories with National Trust bodies have powers about appointing and directing an administrator within their relevant Acts that are not part of the NTWA Act. These include:

- The power to appoint an administrator (Queensland and Tasmania)
- The power to direct the Administrator to give the Minister a report on the Trust’s financial position, functions and any other information requested (Queensland)
- The power to direct the Administrator’s exercise/performance of the Trust’s functions/powers (Queensland and Tasmania)
- The power to direct the transfer of property on such terms the Minister thinks appropriate, in the event that the Trust is wound up (N.S.W. and Tasmania)

There is no similar power in the NTWA Act. The Review suggests the Minister and Trust assess this matter and take appropriate action to address the issue either by amendment to the NTWA Act or other means.

Recommendation

The Minister should consider the matter of providing for the appointment of an administrator to the Trust if the need arises, and should take appropriate action to address the issue either by amendment to the NTWA Act, or obtaining legal advice about other means that may be considered for the Minister to take this action if required.

3.2.7 Openness and transparency

The Review was advised and received a written submission from Mr Michel Lewi AM, a current councillor and former Chair of the Council that he considered the provision of information to members about the affairs of the Trust, as administered by the Council, as somewhat lacking and he made the following recommendations relevant to this point:

The Trust’s periodical, Trust News should include a CEOs column “to regularly inform members of the Trust about the Councils proceedings and its administration of the Trust’s business”; and

"the standard agendas of Annual General Meetings of the Trust should include some greater consideration of current issues facing the Council”

To promote openness and transparency of the Trust to its members and the wider the community, to which it is accountable, the Review also suggests the Trust should consider publishing on its website relevant and important Trust documents about how it operates including strategic documents and copies of the Council and Executive Committee meeting agendas and minutes.
Recommendations

i. The Trust consider including a CEOs or Chairman's column in the Trust news periodical about the Councils proceedings and its administration of the Trust's business.

ii. The Trust consider including greater coverage of current issues facing the Council in the standard agendas of Annual General Meetings of the Trust.

iii. The Trust should publish on its website relevant and important Trust documents about how it operates including strategic documents and copies of the Council and Executive Committee meeting agendas and minutes, with appropriate redactions to maintain personal privacy and necessary commercial confidentiality. For example, the Trust's rules, the Strategic Plan 2011-2016 and policies developed for the acquisition, sale or disposal of property.

4.0 ROLES, RESPONSIBILITIES AND ACCOUNTABILITIES

A review of corporate governance of statutory authorities at a Commonwealth government level reported that:

Ministers and statutory authorities are likely to have developed arrangements for regular communication in addition to formal reporting requirements to ensure both parties are kept informed of relevant matters and that there are 'no surprises' for the Minister.

A major determinant of the governance arrangements of statutory authorities is their enabling legislation. The enabling legislation will in most cases detail the relationship between the Minister and the statutory authority, establishing the level of independence within which the statutory authority will operate. Where the enabling legislation of an authority is silent on the powers of a Minister, it cannot be assumed that power does not exist.

The principle of responsible government requires Ministers to be accountable to the Parliament (and ultimately the public) for government administration, including the activities of statutory authorities within their portfolios. Accountability is achieved in a variety of ways, including by statutory authorities reporting annually to Ministers who table those reports in Parliament, and by Ministers responding to questions in the Parliament about any matter within their portfolios, including the operations of statutory authorities.

The confidence and trust of the public in how heritage places are conserved and managed in Western Australia is of paramount importance for current and future generations, and is inextricably linked to the quality of the working relationship between the Minister for Heritage and the Trust.

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A lack of clarity and misunderstandings about roles and responsibilities is often the cause of breakdowns in relationships and lines of communication. A report\textsuperscript{17} by the Auditor General of Western Australia about boards governing statutory authorities found:

"Most boards would benefit from a formal clarification of their role. Legislation is usually quite unspecific about duties and relationships between Ministers, boards and agency management. Memorandums of understanding or charters should be agreed to ensure that roles and responsibilities are adequately defined."

\section*{4.1 Minister for Heritage}

The Minister has two roles in regards to heritage in Western Australia. He is responsible for the administration of the \textit{Heritage of Western Australia Act 1990} (the Heritage Act 1990) under which the Heritage Council WA and office operate, and the administration of the NTWA Act under which the Trust operates.

In regard to the NTWA Act, the Minister is accountable to the Premier, Parliament and the public for the administration of the NTWA Act.

By virtue of his Ministerial position and heritage portfolio responsibilities, the Minister is required to respond to questions raised in Parliament about matters that occur under the provisions of the NTWA Act, and with respect to the operation of the Trust. It follows that in order to fulfill his parliamentary responsibilities for the administration of the NTWA Act, the Minister must be informed on a proper and timely basis about matters arising from the undertaking of the provisions described in the NTWA Act by the Trust.

While being responsible for the administration of the NTWA Act, and as the Minister for Heritage being accountable for the Trust within the parliamentary process, the Minister is in a difficult and unique position in that he has no statutory power in respect to; the operations of the Trust, the ability to direct the Trust or to require information be provided to him about the operations of the Trust. This puts the Minister in a unique and difficult position of being accountable and answerable to parliament and the community for the actions of the Trust, but not having any power to exercise a level of authority commensurate with his responsibility.

The Review found that no other Australian State or Territory legislation applying to the administration of the National Trust in that State or Territory, includes any power for the relevant Minister to either significantly direct the actions or to seek information regarding operations of the relevant Trust. This approach is no doubt due to the various National Trust state and territory bodies being independent advocates for the conservation of heritage property. They are volunteer reliant organisations that also rely on community membership, significant tax

\textsuperscript{17} Auditor General Western Australia Report No 9 November 1998 PUBLIC SECTOR BOARDS - Boards governing statutory authorities in Western Australia.
concessions and various financial grants and donations to undertake their functions. While this is the case, it does not necessarily mean there are not deficiencies, weaknesses or areas where improvements could be made in the current Trust organisational model. This is particularly in respect to the difficulties faced by the Minister in being accountable as Minister for Heritage for the actions of the Trust, while not having any power to direct or request and receive information to fulfil parliamentary responsibilities and obligations.

In relation to the Trust's accountability to the Minister, it is relevant to note the report of the Commission on Accountability 1989, which reviewed procedures and made recommendations about protecting the public interest and improving financial management and accountability of departments and statutory authorities with investment roles, commented: "The Commission is of the opinion that whether with respect to any public sector agency, the idea of investment accountability is satisfied can best be judged by the application to its investment activities of a number of criteria". These criteria included:

(h) whether a Minister of the Crown has been appointed with overall political responsibility for all the acts of the agency, and so as to enable him to discharge that responsibility, with authority to control the agency's investment decisions and oversee its procedures. Necessarily involved in that is a grant of power to the Minister to have unrestricted access to the agency's financial records and unrestricted access to the records of the agency's decision maker and with authority to call for explanations as to the ends sought to be achieved by investment transactions and decisions entered into and made by the agency; and

(i) whether the responsible Minister recognises that he is under a duty which he owes to Parliament – a political but not legally enforceable duty - to answer proper Parliamentary questions which relate to the information which he has or which he has the authority to obtain.

Recent events between the Minister and the Trust, and interviews held as part of the Review, have indicated that at times there are different interpretations about the roles, responsibilities and accountabilities of and between the Minister and the Trust. The Review noted that the Minister and the Trust have different views on matters that include; what role the Minister should have in the affairs of the Trust, information the Minister should receive, and the timeliness of information provided to the Minister by the Trust. Examples provided to the Review about concerns of the Minister in regard to aspects of the operation of the Trusts governance protocols included:

- The Trust approaching other Ministers on heritage related issues, such as the acquisition and disposal of real property, without the Minister for Heritage being made aware this was occurring.
The Review considers these to be legitimate concerns of the Minister, impacting on his ability to meet his parliamentary obligations.

The Trust defines itself as "a 'Trust' for the community and government" and "a member focussed not-for-profit organisation". This being the case, the Trust needs to be mindful of this and as appropriate consult with and inform the government about matters that it is involved in, that affect the government of the day.

4.2 National Trust of Australia (WA)

Since its inception in 1959, the Trust has performed an independent advocacy role in promoting and managing Western Australia's natural, Aboriginal and historic heritage through the conservation and interpretation of heritage places on behalf of the community and government of Western Australia.

The Trusts statutory role and responsibilities are described through section 5 of the NTWA Act "Objects of the Trust" and the related Schedule (refer to Appendix 6), and its mission is to "conserve and interpret Western Australia’s heritage (historic, natural and Indigenous) for present and future generations".

The Western Australian Public Sector is a composite of a number of different publicly funded bodies, these are:

- departments
- statutory authorities comprised of:
  - Schedule 2 SES (Senior Executive Service) organisations
  - non-SES organisations and
- boards and committees.

A number of other entities which are also statutory authorities fall outside the defined concept of the public sector (usually because they are independent from day to day direction and control by their responsible Minister) but are still part of the broader State government sector. These are listed in Schedule 1 to the Public Sector Management Act 1994. Statutory authorities are government entities established by separate Acts of Parliament and they are usually overseen by Boards of Management or Commissioners or other statutory officers. There are about 200 statutory authorities in the WA Public Sector and their functions range from:

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18 NTWA Annual Report 2009-2010
The Trust is a statutory authority, and under the Public Sector Management Act 1994 (the PSMA) it is not an agency or department, but, comes under the definition of an organisation and public sector body (non-SES organisation) with the CEO employed by and accountable to the Council. A non-SES organisation is defined in section 3 of the PSMA to include a body corporate established for a public purpose under a written law and is subject to the provisions of the PSMA. As a public sector body, the Trust is bound by and subject to various legislative accountabilities and oversight in and including:

- Auditor General Act 2006
- Financial Management Act 2006
- Freedom of Information Act 1992
- Equal Opportunity Act 1984
- State Records Act 2000
- Occupational Safety and Health Act 1984
- Disability Services Act 1993
- Public Sector Management Act 1994, Public Sector Commissioner's\(^{21}\) instructions and Public Sector ethical principles and codes
- State Supply Commission Act 1991

While the Trust shares some traits and accountability requirements with other WA government statutory authorities, it is a unique statutory authority model for the following reasons:

- It is part funded by the State government. The Review was advised by the Minister's office that the Trust receives base funding as part of the State Budget, and the Minister has no role in this appropriation. The Minister has a role if additional funding is sought.
- The Trust's financial viability and existence is achieved through access to a combination of State government funding, Australian Tax Office (ATO) tax concessions, access to funds from Lotterywest and the non-paid work of its Councillors, committee members and dedicated group.

\(^{21}\) Public Sector Commissioner
of registered volunteers (295 who in 2009/10 volunteered 8,800 hrs worth an estimated $233k - the Trust Annual report 2009/10).

- All of the Councillors and committee members hold honorary (non-paid) positions.
- None of the positions held on the Council are appointed by the Minister.
- It is a statutory authority with paid up members from which 16 of the 25 Councillors are elected to the Council in accordance with the Trust's rules, which is uncommon. For example other statutory authorities such as the Art Gallery of Western Australia that want to encourage community involvement in their area generally establish separate entities e.g. Friends of the Gallery. Most statutory bodies with their own memberships are not established for public purposes (eg Royal Agricultural Society; WA Greyhound Racing Association; WA Trotting Association).

- The Trust's generally unique structure and 'arms length' relationship with the Minister and government is perceived by its Council to be a significant factor in attracting members, supporters and partners in many of its initiatives.
- The Trust is not specifically accountable through the provisions of the NTWA Act to a Minister.
- The NTWA Act does not provide for significant ministerial power of direction over the Trust.
- The NTWA Act does not include provision for the Minister to request or direct that information be provided as required to enable the Minister to answer questions in Parliament.

The second reading speech made in Parliament prior to the enactment of the NTWA Act in 1964 provided insight into the model proposed at that time for the Trust, where it was stated "I wish to emphasise that it is not intended or suggested we should divert large Government sums for this purpose" and it was expected that public support for the objects of the trust would see "contributions in both cash and kind" occur.

Under the provisions of the NTWA Act from which the Trusts existence is drawn, and the current model of operation, the Trust is regarded by the Australian Taxation Office as "an income tax exempt charitable entity" and endorsed by the ATO to access tax concessions in regard to income tax exemption, GST concession and FBT rebate. The Trust has also previously received legal opinion about its eligibility as an organisation under section 24 of the Lotteries Commission Act 1990. The opinion obtained by the Trust was that "there is

22 Except under section 11(1)(c) the Minister may for various reasons remove an appointed councillor from office and under s.21 where the consent of the Minister is required to borrow any money, or mortgage or charge any property.

23 Information contained in a letter from the ATO to the National Trust in June 2000.
insufficient control exercisable over the activities of the National Trust to indicate that the National trust is an agency or instrumentality of the State" i.e. its accountability is to Parliament directly, rather than to a Minister and therefore it is eligible for grants from the Lotteries Commission.

4.3 Discussion of options to assist the Minister

The following are options for the Minister to consider (in consultation with the Trust), with respect to actions that could be taken to address issues raised by the Minister with the Commissioner, to assist the Minister to meet his parliamentary duties.

Options not requiring legislative amendment

The review considers the following options, not requiring amendment of the NTWA Act, could be readily acted on to:

- assist the Minister and Trust to better understand and undertake their roles, responsibilities and authorities with respect to each other; and
- improve the capacity of the Minister to receive timely advice regarding the operations and governance of the Trust, without compromising the Trust’s current model of operation and its viability.

Communications Agreement

As required under Section 74 (1) of the PSMA, the Minister has established a Communications Agreement (the Agreement) (Appendix 7). The Agreement is intended to set out in writing the manner and circumstances in which, dealings are to be had, and communications are to be made, between ministerial officers assisting the Minister and employees of the Trust. The Agreement also includes a section about communications between the Trust and the office of a Minister responsible for another portfolio, which includes a requirement that the Trust inform the Minister for Heritage of any discussions in regard to the impact on his portfolio.

The Review suggests that to address any ambiguities about matters described in the Communications Agreement it should be subject to a review in regard to the information it contains and the obligations of both parties in relation to what is stated within the agreement. For example, there is no reference in the document as to when discussions should take place between the Trust’s employees and the Minister’s ministerial officers i.e. before, after, or before and after a meeting is held between the Trust and a Minister responsible for another portfolio. Also, the current agreement signed by the CEO, is over two years old and should be signed by the Trust Chairperson. A statement of roles, which enunciates the Minister’s responsibility to Parliament for the administration of the legislation establishing the trust, his position representing the public as the “owners” of the trust, and the reporting lines for the board to the Minister, could be spelt out.
Memorandum of Understanding

In addition to the s.74 Communications Agreement, about the manner and circumstances in which dealings and communications should occur between the Minister's officers and employees of the Trust, the review considers the development of a memorandum of understanding (MoU) is a viable and expedient option that could be used to strengthen relationships, understanding and communication between the Minister and the Trust.

The Review believes the benefit of using an instrument such as a MoU is that by consultation and negotiation, a quick solution can be possible in respect to clarifying accountabilities, roles, obligations and protocols between the Minister and Trust.

The Trust's Rules

Under section 27 (a) of the NTWA Act, the Trust may make rules with respect to regulating the affairs, business and management of The Trust.

The Review considers another possible expedient option to address the Minister's concerns, is for the Trust (in consultation with the Minister), to introduce protocols in its Rules (refer to 3.2.1 – The Trust Rules) to manage and address the information requirements of the Minister.

Recommendation

It is recommended that the Minister (in consultation with the Trust) consider the following non-legislative options, and take action where considered appropriate and necessary to assist the Minister to conduct and meet his parliamentary business and duties in respect to the Trust:

Communications Agreement

- Review the current Communications Agreement to make improvements as required, and ensure both parties understand their obligations comply with points contained in the agreement.
- The Minister's communication agreement with the Trust should be formally agreed with the Trust Chair and not with CEO as per the current agreement.
- All formal communication between Minister and the Trust on matters not covered by the Communications agreement should be through the Chair.

Memorandum of Understanding

- Investigate the use of an informal agreement such as a Memorandum of Understanding which both parties agree to abide with, to facilitate effective relationships, communications and information exchange occurring between the Minister and the Trust. The MoU should include provisions and protocols to be observed by the Trust in its communication with other Ministers, with the media
Review of the National Trust of Australia (W.A.)

Amend the Trust’s Rules

- The Trust (in consultation with the Minister) consider amending its Rules, to introduce protocols for the management and addressing of information requirements of the Minister in respect to the Trust’s affairs, to assist the Minister to meet his parliamentary duties. The amendment should address matters such as protocols to be observed by the Trust in its communication with other Ministers, with the media and/or with other named entities on specific topics where the Minister is a key stakeholder.

Options requiring legislative amendment

In relation to the operation of the Act the review concluded that the Act is inconsistent with contemporary legislative practices in two key areas, those being the size and nomination provisions for the Council and a lack of power of the Minister to direct the activities of the Trust. These are not considered to be an impediment to the achievement of the outcome being sought by the Minister in seeking this review and it is suggested that the issues identified could be substantially addressed through the implementation of the options listed above not requiring legislative amendments. Notwithstanding this, the following options are open to the Minister to consider and further investigate in regard to amending the NTWA Act to:

- address its inconsistency with contemporary legislative practices in areas such as the NTWA Act not providing Ministerial power to seek information or direct the Trust; or
- introduce an alternative approach for the structure and operation of the Trust.

It should be noted that for each of the options listed (i-iii) any action to significantly change the structure and model by which the Trust currently operates, particularly where power to direct the Trust’s activities is provided to a Minister, would require extensive consultation, further investigation and assessment of the strengths and weaknesses of each proposal in relation to the following:

Factors to Consider

- the sources and amounts of funding required to support the different models proposed;
- the affect on the independent advocacy role the Trust plays in conserving and protecting Western Australia’s heritage;
- the affect on the membership base of the Trust;
- the affect on attracting volunteers to support the objects of the National Trust;
- the affect on the Trust’s ATO tax concession and exemption status;
• the affect on eligibility for funding from Lotterywest;
• the protection of public ownership interests in assets of the Trust;
• funding implications for the government;
• accountability to government regulatory legislation and associated bodies (Refer to 4.2);
• the power to make by-laws;
• the level of gifts, bequests and donations from persons and parties; and
• the community participation the Trust currently receives under its present model of operation.

(i) Ministerial power to seek information and direct activities

The first option is in respect to amending the NTWA Act to provide the Minister with power to either:

• seek information when required, or
• seek information when required and determine and direct the Trust’s activities.

To various degrees these would address the Minister’s concerns in respect to:

• improving the provision of information to him about the operations and governance of the Trust; and
• being accountable to parliament and the community for the Trust, but not having power to determine and direct the Trust’s activities.

These options would also provide an opportunity to update the NTWA Act in respect to contemporary practices that either the Minister or Trust may consider necessary to improve the operations of the Trust. Examples of improvements that could be considered include reducing the number of councillors and refining the current thirty two objects of the Trust.

(ii) The Trust as part of Government

As an SES organisation

The Trust is currently a non-SES organisation under the provisions of the Public Sector Management Act 1994 (PSM Act 1994) and could be converted to an SES organisation by means of regulation. This would require the Trust to have a CEO appointed under the PSM Act 1994, who would be employed by the Public Sector Commissioner (the Commissioner). The CEO would report to the Council, but be accountable to the Commissioner (the CEO’s employer) for their performance.

The Trust was previously an SES organisation. In 1994, the Public Sector Management Act 1994 (the PSM Act) was enacted, and Schedule 2 listed all the Senior Executive Service (SES) organisations. Although the Trust had been deleted from the Senior Executive Service (Inclusions) Amendment Notice (No.4) 1988, it was still included in Schedule 2 of the PSM Act (listed as item 51).
On 5 October 1995, the then Public Sector Management Office received a letter from the Trust, requesting that the Trust be removed from Schedule 2 of the PSM Act because,

"...none of its officers are members of the Senior Executive Service and the Trust is finding increasingly that the obligations applicable to public sector bodies to which the Act applies, are placing demands beyond the resources of the Trust and which are on the whole inappropriate to the Trust, having regard to the manner and purpose for which the Trust was established."

On 18 October 1995, the Public Sector Management Office received a letter from Mr Richard Lewis JP MLA, the Minister for Heritage at the time, supporting the Trust’s request to be removed from Schedule 2 of the PSM Act. On 10 November 1995, the Public Sector Management Office sent a letter to Mr Richard Lewis JP MLA, notifying him that action to remove the Trust from Schedule 2 would be progressed in accordance with the wishes of the Minister and the Trust.

In 1996, the Trust was deleted from Schedule 2 when the PSM Act was amended by the Government Gazette on 20 August 1996.

The Review is of the opinion that re-considering the Trust as an SES organisation is not a viable option, as it may compromise the Trust’s advocacy role. It may also affect its membership base and not change the current situation where the Minister has no power to seek information or direct the activities of the Trust, which can only be changed through legislative amendment.

Department of State

While the option of incorporating the Trust within a Department of State would address a number of issues faced by the Minister for Heritage in meeting parliamentary obligations, departments of state fundamentally exist to provide policy and administrative support to Ministers of the Crown to address Government’s changing needs via the allocation of public resources. Therefore, a number of factors would need to be considered and assessed in undertaking this option, these include the functions and assets of the Trust would need to be vested in the Minister, and those factors listed on page 43 under ‘Factors to Consider’.

(iii) The Trust as a Non-government Organisation

If the current arrangements where the Trust operates independently is preferred, but with enhanced accountability for the Trust’s actions, other options for the legal structure of the Trust, transitioning it outside the public sector include:

- establishing the Trust as a non-government organisation under the Associations Incorporation Act 1987; or
- the creation of a company limited by guarantee under the Corporations Act 2001. As a company limited by guarantee the Trust would no longer have its financial position audited by the Auditor General and this is an example of the type of costs that would transfer to the Trust if its status changed.
Properties vested in the Trust would be controlled by the company and managed by it according to its constitution and rules, unless the State retained ownership of those properties.

Recommendation

The Minister consider further investigating the following options (in consultation with the Trust and other key stakeholders) and take action where he deems it appropriate to assist him to meet his parliamentary duties:

- amend the NTWA Act to provide power to the Minister to seek information from the Trust;
- amend the NTWA Act to provide power to the Minister to direct the Trust in its activities; or
- amend the NTWA Act to introduce alternative models (State Department or NGO) for the Trust's operation.
Appendix 1 - People consulted for the Review

<table>
<thead>
<tr>
<th>Name</th>
<th>Job Title</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hon John Castrilli MLA</td>
<td>Minister for Heritage</td>
<td>Member of Cabinet</td>
</tr>
<tr>
<td>Mr Gary Brennan</td>
<td>Chief of Staff</td>
<td>Office of the Minister for Heritage</td>
</tr>
<tr>
<td>Ms Sheryl Siedlerka</td>
<td>Principal Policy Officer</td>
<td>Office of the Minister for Heritage</td>
</tr>
<tr>
<td>Hon John Cowdell AM</td>
<td>Chairperson</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Max Kay AM CIT</td>
<td>President</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Gregory Boyle</td>
<td>Deputy Chairperson</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Michel Lewi AM</td>
<td>Councillor</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Professor Ms Jennifer Gregory AM</td>
<td>Councillor (former Chairperson)</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Thomas Perrigo</td>
<td>Chief Executive Officer</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Enzo Sirna</td>
<td>Deputy Chief Executive Officer</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Pasquo Ciriolo</td>
<td>Director Finance, Audit &amp; Administration</td>
<td>National Trust of Australia (WA)</td>
</tr>
<tr>
<td>Mr Robert Cock QC</td>
<td>Special Counsel</td>
<td>Public Sector Commission</td>
</tr>
<tr>
<td>Mr John Lightowlers</td>
<td>General Counsel</td>
<td>Public Sector Commission</td>
</tr>
<tr>
<td>Mr Lindsay Warner</td>
<td>A/ Director Policy and Reform</td>
<td>Public Sector Commission</td>
</tr>
<tr>
<td>Mr Nigel Dymond</td>
<td>Principal Policy Officer</td>
<td>Public Sector Commission</td>
</tr>
</tbody>
</table>
Appendix 2 - Structure of the Western Australian Public Sector

The Western Australian Public Sector is a composite of a number of different publicly funded bodies, these being:

- departments
- statutory authorities comprised of:
  - Schedule 2 SES (Senior Executive Service) organisations
  - non-SES organisations and
- boards and committees.

Departments

WA Government departments are established under section 35 of the Public Sector Management Act 1994 (PSMA). Under this section of the Act, the Governor may, on the recommendation of the Commissioner:

- establish
- amalgamate
- divide
- abolish, or
- change the titles of departments of State.

Under s35 (4) the Minister responsible for administration of the PSMA may direct the Commissioner as regards the establishment etc of a department.

The primary roles of departments are to assist the Minister to administer legislation and develop and implement government policies. There are currently approximately 30 departments, the Department of Education and the Department of Health are the largest with approximately 30,000 Full Time Equivalent (FTE) staff, the next largest are:

- WA Police
- the Department of Corrective Services, and
- the Department of Environment and Conservation

each of which had in excess of 1500 FTE in June 2008. The smallest department is the Office of the Inspector of Custodial Services with 16 FTE.

Statutory Authorities

Statutory authorities are government entities which are established by separate Acts of Parliament and they are overseen by Boards of Management or Commissioners.

There are about 200 statutory authorities in the WA Public Sector and their functions range from:

- commercial, e.g. Western Power, the Water Corporation and Gold Corporation
- regulatory, e.g. Worksafe, Office of the Information Commissioner, Corruption and Crime Commission and the Office of Equal Employment Opportunity
- marketing, e.g. the Potato Marketing Board
- educational, e.g. the universities and TAFE colleges, and
- administrative, e.g. the Mid-West Development Commission.

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24 Public Sector Commission - "Machinery of Government Structural Changes Manual"
There are some statutory authorities which are also constituted in other ways. For example the Disability Services Commission is both a statutory authority and a department at one and the same time. The Public Sector Commission (PSC) is established by statute and constituted as a department. In some cases a department is established to support a particular statutory officeholder, such as the Director of Public Prosecutions, Auditor General, and Commissioner of Police.

The PSMA categorises statutory authorities in one of three ways:

- statutory authorities listed under Schedule 1 of the PSMA, which are not subject to the Act (e.g. Western Power) and are not included in the Public Sector as defined in the Act. The PSMA is least applicable to Schedule 1 entities and PSC has minimal involvement with them from the machinery of government perspective because they are operationally independent of the Public Sector Commissioner.

- Senior Executive Service (SES) organisations – statutory authorities listed under Schedule 2 of the PSMA, which are subject to the Act (e.g. Small Business Development Corporation) and have Chief Executive Officers (CEOs) employed by the Public Sector Commissioner and may also have senior executive service officers appointed under Part 3 of the PSMA, and

- non-SES organisations – statutory authorities which are not listed under either Schedule 1 or 2 (e.g. Potato Marketing Corporation of Western Australia). While they are still State Government bodies they are not part of the Public Sector as defined in the PSMA however, they are subject to the Act. The CEO is employed by the board of management rather than by the Public Sector Commissioner and non-SES organisations do not have senior executive service members appointed under Part 3 of the Act.

The PSMA uses the terms department, agency, organisation and non-SES organisation with specific meanings and this manual uses these terms as they are used in the Act. This may make the manual slightly less consistent with general practice, such as using the term ‘agency’ as a more broad ranging term, but it is important for consistency and accuracy that the terms are applied properly. See the ‘Glossary’ for more information.

Boards and Committees

There are approximately 650 boards and committees in the public sector which are created variously by statute, Cabinet, Ministers or departments. The functions of boards and committees are quite varied and can include:

- advisory, e.g. Aged Care Advisory Council
- managerial, e.g. Rottnest Island Authority, and
- regulatory or registration, e.g. Dental Board of WA, Medical Board of WA and Architects Board of WA.
## Appendix 3 - Overview of the National Trusts of Australia bodies

<table>
<thead>
<tr>
<th>Purpose or Mission</th>
<th>C'wealth</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>VIC</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>To foster advocacy, research and promotion support the movement in conserving Australia’s heritage</td>
<td>Through advocacy, knowledge about and conserve places and objects that are significant to our heritage</td>
<td>To be an independent, non-government community advocate, understanding and safeguarding our heritage today and tomorrow</td>
<td>To promote the preservation and awareness of the heritage of the Northern Territory</td>
<td>To identify, preserve and promote our heritage</td>
<td>It is our mission to be an independent membership organisation, committed to the conservation of Natural and Cultural Heritage</td>
<td>The mission of the Trust is to engage the community in identifying, conserving and interpreting Tasmania’s heritage</td>
<td>The mission of the National Trust of Australia (Victoria) is to inspire Australians to conserve our heritage</td>
<td>The National Trust of Australia (WA) will conserve and interpret Western Australia’s heritage (historic, natural and indigenous) for the present and future generations</td>
<td></td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Governed by an elected Board</td>
<td>Governed by an elected Board</td>
<td>Governed by an elected Council</td>
<td>Governed by an elected Council</td>
<td>Governed by an elected Council</td>
<td>Governed by an elected Council</td>
<td>Governed by an elected Council</td>
<td>Governor reports to the Board</td>
<td>Governed by a Council (elected and appointed)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Members (as at July 2005)</th>
<th>The 8 State and Territory Trusts</th>
<th>2,000</th>
<th>27,500</th>
<th>380</th>
<th>8,900</th>
<th>6,000</th>
<th>1,417</th>
<th>20,000 (13,000 memberships)</th>
<th>5,500 (3,000 memberships)</th>
</tr>
</thead>
</table>
Appendix 4 - Organisational Structure of the Trust
Appendix 5 - Reference Documents and Information

➢ Auditor General Western Australia Report No 9 November 1998 - Public Sector Boards


➢ WA Public Sector Commission - Good Governance for Western Australian Public Sector Boards and Committees

➢ The Audit Office for New South Wales - Guide to better practice for public sector governing and advisory boards

➢ The Audit Office for New South Wales - Public Sector Corporate Governance Ready Reckoner

➢ WA Office of the Public Sector Standards Commissioner - Good Governance Guide Compliance Checklist

➢ The Australian Standard 'Corporate governance - Good governance principles' AS 8000-2003

➢ The Select Committee on Heritage Laws Report - 23 January 1995


➢ Burt Commission on Accountability Report January 1989
Appendix 6 - Relevant Legislation

NTWA Act s.20. Sale or disposal of certain property

(1) Where The Trust adjudges any real or personal property that is vested in it, to be unfit or not required for the objects of The Trust it may, with the consent of the Governor, notwithstanding the terms of any trust affecting that property or of any arrangement or condition made or agreed to buy it at the time of the acquisition of the property by The Trust —

(a) sell the property or exchange it for any other property; or
(b) dispose of it without consideration or, in the case of personal property, destroy the property, if The Trust adjudges it to be of no saleable value,

and the proceeds of any sale made pursuant to paragraph (a) shall, after deducting the costs of and incidental to the sale from the proceeds, be held for the objects of The Trust.

(2) Any property sold or disposed of by The Trust, pursuant to subsection (1), shall vest in the person acquiring the property by virtue of the sale or disposition freed and discharged from any trust, arrangement or condition relating to any sale or disposition of the property or to the use of the property, to which it was subject in the hands of The Trust.

(3) A person acquiring any property from The Trust purporting to exercise any of the powers conferred on it by subsection (1) shall not be concerned to inquire whether a case has arisen to authorise the sale or other disposition of the property or whether the power was otherwise duly exercised or to see to the application of any purchase money paid to The Trust.

NTWA Act - S.26 By-laws

(1) The Council may make by-laws not inconsistent with this Act for or with respect to —

(a) the care, control and management of lands, buildings or chattels acquired by, vested in, or under the control of The Trust;
(b) the regulation of the use and enjoyment of those lands, buildings or chattels;
(c) the securing of decency and order upon those lands or buildings;
(d) for preventing trespassing on any of those lands and buildings and for the removal of trespassers and other persons causing annoyance or inconvenience upon or in those lands or buildings;
(e) the regulation or prevention of the taking of intoxicating liquor onto or into and the consuming thereof upon or in those lands or buildings;
(f) the regulation, control or prohibition of the taking of animals onto or into those lands or buildings or permitting or suffering animals to be on or in those lands or buildings;

26 Excerpts from the National Trust of Australia (W.A.) Act 1964
(g) the regulation, control or prohibition of the lighting of fires, parking, camping or residing on or in those lands or buildings, the making of charges for the parking, camping or residing, and the collecting and receiving of those charges by the Council or by other persons;

(h) the preservation or protection of, or prevention of damage to, animals, birds, fish or other fauna whatsoever, trees and plants of any kind whatsoever, in or on any of those lands;

(i) the making of charges or entrance fees for persons, clubs or associations using or entering upon those lands or buildings or any specified parts thereof and the collecting and receiving of those charges and fees by the Council or by other persons;

(j) the preservation, protection or removal of any rocks, soil, sand, stone or other similar substances on or under or comprising part of those lands;

(k) the protection or removal of all dead timber, logs and stumps on those lands, whether standing or fallen;

(l) the prescribing of any other matter that it is necessary or convenient to prescribe for the purpose of the administration and enforcement of this Act, not being matters for and with respect to which rules may be made.

(2) The by-laws may impose a penalty not exceeding $100 for any breach thereof.

(3) Every by-law made by the Council under this section shall be —

(a) sealed with the common seal of The Trust;

(b) submitted to the Governor for confirmation before being published in the Gazette or laid before Parliament,

and shall not be so published or laid before Parliament or have any force or effect unless confirmed by the Governor.

[Section 26 amended by No. 84 of 2004 s. 80; No. 19 of 2010 s. 51.]
Schedule — Objects of Trust

[Heading amended by No. 19 of 2010 s. 4.]

(a) To establish and maintain within the State of Western Australia a public educational institution the purpose of which is to educate members of the public and to awaken, stimulate, encourage and maintain the interest of members of the public in, and to promote public knowledge of, places and things which are of national or local importance by reason of educational, historic, architectural, traditional, legendary, artistic, literary, scientific, antiquarian, archaeological or other special interest attaching to them and of places of natural beauty and the flora and fauna thereof by giving effect to all or any of the objects and purposes hereinafter set out.

(b) To provide for the holding of classes, lectures, seminars, exhibitions, meetings and conferences calculated directly or indirectly to advance the cause of education of members of the public and imparting knowledge of history of places and things of national or local importance as aforesaid and to that end to co-operate with the Department of Education of the State of Western Australia, The University of Western Australia, the Director of Adult Education of the State and any other public educational institution.

(c) To print, publish, sell, distribute and circulate books, advertisements and publications of any and every kind as are calculated to promote and advance the objects and purposes of The Trust.

(d) To compile and preserve suitable records of buildings, places and things, of national or local historic interest or which traditionally are held or believed to be identified with the arts, crafts, history, legends and mythology of early inhabitants and pioneers of the State of Western Australia or the Commonwealth of Australia.

(e) To employ and remunerate a director or directors of studies, teachers, lecturers, tutors, research workers and students, secretaries and other employees and persons as may be necessary for the purposes of carrying out and giving effect to the objects and purposes of The Trust.

(f) To establish and maintain a library or libraries, both reference and circulating.

(g) To offer, give or contribute toward any scholarship, prize, medal or reward for any research, literary contribution, article, essay or effort connected with the objects of The Trust.

(h) To make grants to persons approved by The Trust to assist them to make studies, research or investigations approved by The Trust.

(i) To co-operate with any other institution or society having objects similar to the objects of The Trust.

(j) To acquire by purchase, lease or otherwise, any land, building, places and things of national or local importance as aforesaid for the purpose of maintaining, protecting and preserving them for the benefit of the public.

(k) To awaken, encourage and stimulate appreciation, enjoyment and respect by members of the public for places and things of national or local importance as aforesaid.

(l) To take such steps as may be necessary or desirable to manage and preserve any buildings, places or things of national or local importance as aforesaid from time to time owned by or under the control of The Trust.

(m) To acquire or accept the gift, devise or bequest of, or on loan to or lease any building, place, land, relic, chattel or other things considered to
be of national or local importance as aforesaid and if any such gift, devise or bequest or control or loan or lease be subject to any trust or condition to give effect to such trust or condition.

(n) To take such steps as from time to time may be deemed expedient for the purpose of procuring grants, subscriptions and contributions to the funds of The Trust.

(o) To accept for the promotion, attainment, maintenance and advancement of the objects and purposes herein set out gifts, bequests and legacies of moneys and other valuable assets and property.

(p) To entrust any land, building, relic, chancel or other things for safe custody and control to any other Local Government, Public, National or other Gallery, museum, association, society or body of persons whether incorporated or not upon such terms and conditions as The Trust thinks fit with power at any time to require the return thereof to The Trust.

(q) To enter into agreements with Local Governments, corporations, societies and individuals for the management, maintenance and preservation of any places or things of national or local importance as aforesaid.

(r) To maintain and manage, either alone or jointly with any Local Government or other authority or body of persons (corporate or unincorporate), any building or place or things of national or local importance as aforesaid.

(s) To cause such steps to be taken as in the opinion of The Trust are necessary to make places and things of national or local importance as aforesaid readily accessible to the public under proper conditions.

(t) To charge such fees for admission to lands and buildings vested in it or under its control as The Trust thinks fit.

(u) To expend any money and generally take any action for any purpose that in its opinion is necessary for the exercise of or ancillary to any of the objects, purposes and functions of The Trust.

(v) To give and enter into any guarantee in relation to the payment of any moneys and to give and enter into any form of indemnity.

(w) To acquire by purchase, exchange, gift, devise, bequest, lease, hire or otherwise any real or personal property in furtherance of the objects and purposes of The Trust.

(x) To sell, lease, exchange or otherwise dispose of any real or personal property of The Trust.

(y) To apply to have any kind of The Trust brought under the provisions of the Transfer of Land Act 1893, as amended from time to time, or of any statutory re-enactments thereof.

(z) To construct, build, repair, maintain and alter any buildings.

(aa) To invest the moneys of The Trust not immediately required in such manner as may from time to time be deemed expedient.

(ab) To borrow or raise money and secure the repayment thereof on such terms and at such rate of interest and otherwise as the Council of The Trust from time to time shall think fit and in particular by mortgage or other similar charge on or security over any property real or personal of The Trust.

(ac) To make gifts and to give and make over moneys and other property of The Trust with or without consideration where the making thereof is calculated to promote the objects and purposes of The Trust.
To place any moneys of The Trust on deposit with any bank and to open and pay moneys of The Trust into and operate upon accounts current with any bank.

To promote legislation likely to further and advance the objects and purposes of The Trust and to apply for and accept the grant of a Royal Charter for The Trust.

To do such other acts and things within the State of Western Australia as are incidental or conducive to the attainment of the above objects and purposes or any of them.

(Schedule amended by No. 14 of 1996 s. 4; No. 8 of 2009 s. 96.)
ARRANGEMENTS FOR COMMUNICATIONS AND DEALINGS BETWEEN
STAFF OF THE OFFICE OF THE MINISTER FOR HERITAGE
AND STAFF OF THE NATIONAL TRUST OF AUSTRALIA (WA)

1. In accordance with section 74 of the Public Sector Management Act 1994, this
agreement sets out the circumstances and manner in which communications
and any dealings between staff of the Office of the Minister for Heritage (the
Minister) and staff of the National Trust of Australia (WA) will occur.

Communications between the Office of the Minister and the National
Trust of Australia (WA):

2. All communication should be for, and on behalf of, the Minister in relation
to her responsibilities as Minister for Heritage. Should this not be the case,
this should be made clear at the time of communication.

3. The requirements for particular communications are as follows:

   a. Requests for Information or research
      All matters of a 'strategic' nature must be referred to the Chief
      Executive Officer or nominated officer. Staff of the Minister shall not
      approach National Trust of Australia (WA) staff directly for personal
      opinion or advice.

      Where technical advice or information is required, appropriate
      National Trust of Australia (WA) staff may be approached directly.
      Unless the query is minor in nature, the Chief Executive Officer
      should be informed of the communication.

   b. Arranging a meeting with relevant National Trust of Australia
      (WA) staff and requesting their attendance
      Meeting requests relating to matters of a strategic nature must be
      referred to the Chief Executive Officer or nominated officer.

      Where the matter is routine in nature, appropriate National Trust of
      Australia (WA) staff may be approached directly. The Chief
      Executive Officer should be informed of the communication.

   c. Matters relating to the drafting of legislation
      All matters relating to the development of legislation must be directed
      through the Chief Executive Officer or nominated officer.

   d. Requests for briefing notes
      All requests should be made through the Chief Executive Officer or
      nominated officer.
Requirements involving the National Trust of Australia (WA) in committing resources

4. All requests that would require the National Trust of Australia (WA) to commit resources beyond the normal functions and duties of the National Trust of Australia (WA)'s officers should be directed to the Chief Executive Officer. If this is not possible, the Chief Executive Officer must be informed as soon as practicable. The request should be put in writing.

Communications from the National Trust of Australia (WA) to the Office of a Minister responsible for another portfolio

5. It is noted that the National Trust of Australia (WA) Act 1964 provides for freedom of action on the part of the National Trust and makes no provision for Ministerial direction.

It is acknowledged that the National Trust of Australia (WA) may deal directly with another Minister's office as required from time to time but will inform the Minister for Heritage of any discussions in this regard impacting on her portfolio or responsibilities.

Cabinet matters

6. All submissions for consideration by Cabinet must be directed through the Office of the Minister.

Placements and secondments

7. An officer of the National Trust of Australia (WA) placed in the Office of the Minister to provide a National Trust of Australia (WA) viewpoint on a specified range of issues will be under the direction of the Chief of Staff.

An officer seconded to the Office of the Minister is, for the period of the secondment, under the direction of the Minister.

Directions by staff of the Office of the Minister to staff of the National Trust of Australia (WA) on the manner in which they are to perform their duties

8. It is noted that the National Trust of Australia (WA) Act 1964 makes no provision for Ministerial direction.

The staff of the Office of the Minister shall therefore not give direction to any officer of the National Trust of Australia (WA) but will effect normal liaison and discussion through the Chief Executive Officer on any matter where coordination appears desirable.
Resolution procedure for a breach of these arrangements

9. In the first instance, the Minister or her Chief of Staff and the Chief Executive Officer will discuss the breach and coordinate any further action.

Minister for Heritage
Mr Thomas E Perrigo
National Trust of Australia (WA)

Date: 20/12/04
Date: 12/12/04