

WESTERN AUSTRALIA.

ART GALLERY.

8° Elizabeth II., No. LXII.

No 62 of 1959.¹

(Affected by Act No. 113 of 1965.)

[As amended by Act:

No. 28 of 1968, assented to 25th October, 1968;
and reprinted pursuant to the Amendments Incorporation Act,
1938.]

**AN ACT to provide for the control and management
of the Western Australian Art Gallery and for
other purposes.**

[Assented to 10th December, 1959.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Art Gallery Act, 1959-1968*.

Short title.
Amended by
No. 28 of
1968, s. 1.

2. This Act shall come into operation on a day to be fixed by proclamation.¹

Commence-
ment.

3. The Museum and Art Gallery of Western Australia Act, 1911-1955, is repealed.

Repeal.

¹ Came into operation 27/5/60. See *Gazette* 27/5/60, p. 1436.

Interpreta-
tion.

4. In this Act unless the context requires otherwise—

“Art Gallery” means The Western Australian Art Gallery established at Perth;

“Board” means The Western Australian Art Gallery Board constituted pursuant to the provisions of this Act;

“chairman” means the chairman of the Board;

“member” means a person occupying any of the offices of member of the Board including that of chairman;

“Trustees” means The Trustees of the Museum and Art Gallery of Western Australia appointed under the Museum and Art Gallery of Western Australia Act, 1911.

The Western
Australian
Art Gallery
Board.
Amended by
No. 28 of
1968, s. 2.

5. (1) For the purposes of this Act there shall be constituted a board having the name of “The Western Australia Art Gallery Board.”

(2) When constituted the Board—

(a) is a body corporate with perpetual succession and a common seal; and

(b) is, subject to the provisions of subsections (2) and (3) of section twenty of this Act, capable in its corporate name of acquiring, holding, leasing, exchanging, mortgaging and disposing of real and personal property and of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

Constitution
of Board.

6. (1) The Board shall consist of five members including the chairman and vice chairman, all appointed by the Governor.

(2) The Minister shall cause notice of appointments to the respective offices of members of the Board to be published in the *Gazette*.

(3) When the notice is so published the Board is constituted.

7. (1) Subject to the succeeding subsections of this section, all persons appointed as members hold office for a term of four years but are eligible for reappointment. Tenure of office.

(2) A person appointed to fill a vacancy caused otherwise than by the retirement of a member on the expiration of the term of his office, holds office only for the unexpired portion of the term of the office of the member in whose place he is appointed.

(3) (a) Of the members who are first appointed to the Board at the coming into operation of this Act, two hold office for a term of two years.

(b) The Governor shall designate the two members at the time their appointments as members are made.

8. (1) A casual vacancy in the office of a member occurs in any of the following instances— Casual vacancies.

- (a) he dies;
- (b) he tenders resignation from the office in writing under his hand addressed to the Governor in Council and the resignation is accepted;
- (c) he absents himself from three consecutive ordinary meetings of the Board, without having obtained leave of absence from the Board;
- (d) he is removed from office by the Governor;
or
- (e) he is incapable of continuing as a member.

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(2) The Governor may appoint a member upon the happening of any casual vacancy.

(3) The Board may grant leave of absence to a member upon such terms and conditions as the Board determines.

Board may act notwithstanding vacancy.

9. The exercise of a power or the performance of a function by the Board is not invalidated by reason only of there being a vacancy or vacancies in the membership of the Board or by reason of a defect or irregularity in or in connection with the appointment of a member.

Deputies of members.

10. (1) The Governor may in respect of each member, appoint a person as deputy of that member and a person so appointed has, in the event of the absence of the member, all the powers of that member during his absence.

(2) No appointment of and no act done by a deputy in that capacity shall be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

Chairman.

11. (1) The Governor may appoint one of the members to be chairman and another member to be vice chairman.

(2) (a) The member so appointed holds office as chairman or vice chairman as the case may be for the term of his office as member.

(b) When the member ceases to hold office as chairman or vice chairman as the case may be before the expiration of the term for which he is appointed another member may be appointed chairman or vice chairman by the Governor for the unexpired portion of the term of office of the person in whose place he is appointed.

(c) The chairman or vice chairman may resign his office as chairman or vice chairman by notice in writing addressed to the Governor in Council.

(d) If at any time the chairman or vice chairman ceases to be a member, he ceases to be chairman or vice chairman.

12. (1) The chairman or the vice chairman in the absence of the chairman, shall preside at all meetings of the Board. Presiding at meetings.

(2) When the chairman or vice chairman are absent from any meeting the members present at the meeting shall elect a member from among those present to preside at the meeting and the person so elected has during the absence of the chairman all the powers of the chairman.

13. The Board shall conduct its proceedings in such manner as may be prescribed and until prescribed, as the Board determines, but in any case— Proceedings of Board.

each member including the person presiding at a meeting is entitled to one vote only on the determination of any question;

three members constitute a quorum for the conduct of business;

the majority of the votes of the members present determines all questions, but if the votes in favour equal votes against the motion, the motion shall be deemed lost.

14. A member or deputy for a member, in his capacity as member or deputy, is not a public servant under the provisions of the Public Service Act, 1904, but if at the time of his appointment as member or deputy under this Act, he is a public servant, his appointment shall be deemed to be without prejudice to his rights under the Public Service Act, 1904, or any other Act applying to him as a public servant. Preservation of existing rights.

15. Every member is entitled to such travelling and other expenses as the Governor determines. Members' expenses.

Officers.

16. (1) The Board may appoint a Director of the Art Gallery and such other officers as are required for the purposes of carrying this Act into effect.

(2) The Director shall exercise such powers and carry out such duties as may be prescribed.

(3) The Director and other officers although not appointed pursuant to the provisions of the Public Service Act, 1904, are entitled to such leave of absence under that Act and to such rights prescribed by or pursuant to the provisions of the Superannuation and Family Benefits Act, 1938, as would apply, if they were appointed under the first-mentioned Act.

Exempt from personal liability.

17. A person who is or has been a member, deputy for a member, or Director appointed under this Act is not personally liable for anything done or omitted in good faith, in, or in connection with the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed, on the Board by this Act.

General powers of the Board. Amended by No. 28 of 1968, s. 3.

18. (1) The Board—

(a) shall undertake the care and control of the Art Gallery and all lands and premises placed under the care and control of the Board;

(b) shall undertake the care and control of all works of art, exhibits and other personal property acquired by it for the purposes of this Act;

(c) shall receive and apply all moneys voted by Parliament for the purposes of this Act.

(2) The Board may

(a) receive, take, or purchase any work of art, exhibit or personal property;

- (b) sell or exchange any work of art, exhibit or personal property or any work of art, exhibit or personal property under the care or control of the Board;
- (c) lend or make available to any institution, Government department or person, upon such terms and conditions as the Board thinks fit, any work of art, exhibit or other personal property of which the Board has the care and control;
- (d) arrange and hold exhibitions of works of art in such places as it thinks fit, and propagate art by the exhibition or distribution of films, the conducting of discussion on art and the use of other media;
- (e) publish, print and distribute literature on art and reproductions of works of art;
- (f) advise and assist, on such terms and conditions as the Board determines, local authorities and such other bodies as the Minister, on the recommendation of the Board, approves in the establishment, control and management of regional art galleries or like establishments in any part of the State;
- (g) establish, control and manage branch art galleries in any part of the State;
- (h) for any service or purpose, or for admission to the Art Gallery or to any part thereof, or to any branch gallery or to any exhibition, require the payment of such a fee or charge as the Board determines.

19. (1) All personal property in the possession or control of or held in trust by the Trustees for the purpose of being used for the provision of an art gallery is, on the coming into operation of this Act, transferred to and vested in the Board.

Vesting of
certain
property.

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(2) When any doubt or difficulty arises as to whether subsection (1) of this section applies to any property, the Minister may by notice in writing give directions as to that property and a direction so given is binding upon all persons, courts and tribunals.

(3) All contracts entered into or rights enjoyed prior to the coming into operation of this Act by the Trustees which relate to the Art Gallery shall be deemed to have been entered into or enjoyed by the Board and the Board shall take and exercise in respect thereof all the powers, duties, rights, liabilities and immunities of the Trustees.

Vesting of
certain real
property.
Amended by
No. 28 of
1968, s. 4.

20. (1) (a) So much of the land described in the Schedule to the Museum and Art Gallery of Western Australia Act, 1911, and so much of the buildings on that land as the Governor by proclamation declares to be vested in the Board, by the operation of this Act and the proclamation ceases to be vested in the Trustees and vests in the Board for such estate or interest as is mentioned in the proclamation without the necessity of any transfer or conveyance.

(b) A proclamation made under this subsection may be revoked or from time to time by subsequent proclamation varied.

(2) The Board shall not without the consent in writing of the Governor sell, exchange, lease, mortgage or otherwise encumber the land so vested, or any part of, or estate or interest in, the land.

(3) The Board shall not without the consent in writing of the Governor, purchase, sell, exchange, lease, mortgage or otherwise encumber any estate or interest in any land other than the land referred to in subsection (1) of this section, but the Board shall not require that consent for entering into a lease or tenancy agreement for the purpose of establishing or managing a branch art gallery.

Gifts and
bequests to
Art Gallery
and preser-
vation of
rights of
officers and
employees.

21. (1) All gifts and bequests made to, or on behalf of, or for the benefit or purposes of, the Art coming into operation of this Act, be deemed gifts Gallery shall, whether made before or after the

and bequests to, or on behalf of, or for the benefit of, the Board.

(2) All gifts and bequests made to, or on behalf of, or for the benefit or purposes of, the Public Library Museum and Art Gallery of Western Australia shall, whether made before or after the coming into operation of this Act, be allocated or divided between the Board, The Library Board of Western Australia and The Western Australian Museum Board as the Governor thinks fit.

(3) A reference in any other Act to the Trustees shall insofar as it refers to the Art Gallery, be construed as a reference to the Board.

(4) (a) All officers and employees holding office or being employed in the Art Gallery on the coming into operation of this Act shall be deemed to have been appointed and engaged by the Board under the provisions of this Act.

(b) (i) All rights and accruing rights of the officers and employees of the Trustees who are employed by the Board on the coming into operation of this Act remain unimpaired and continue for the purpose of their employment with the Board.

(ii) The Board shall undertake all matters incidental to the fulfilment of any obligations in connection therewith.

(iii) The Trustees shall on the coming into operation of this Act be freed and discharged from the obligations.

22. (1) The funds necessary for the effectual exercise by the Board of the powers conferred and duties imposed upon it by this Act consist of—

Financial provisions.
Amended by
No. 28 of
1968, s. 5.

(a) money appropriated from time to time by Parliament for the purpose;

(b) the proceeds derived from any disposal of or dealing with real or personal property

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which the Board is authorised to effect under the provisions of this Act;

- (c) the proceeds of investments of any part of The Western Australian Art Gallery Fund which is not required for an immediate use;
- (d) money derived from time to time as income by the Board from the management and control of the Art Gallery and from the exercise of its other powers and functions under this Act;
- (e) all gifts, devises and bequests made to the Board; and
- (f) such moneys as the Board acquires under the provisions of section nineteen of this Act.

(2) The Treasurer shall cause to be opened and kept at the Treasury an account called "The Western Australian Art Gallery Fund" into which the money and proceeds referred to in subsection (1) of this section shall be paid.

(3) The Fund may be operated upon for the purpose of enabling the Board to carry out the purposes of this Act, in such manner as the Treasurer from time to time approves.

(4) All money recorded as standing to the credit of the Fund may, until required by the Board for the purposes of this Act, be temporarily invested as the Treasurer directs in any securities in which money represented in the public account may lawfully be invested and the Treasurer shall cause all interest derived from the investment to be paid to the credit of the Fund.

23. (1) Every person who unlawfully

- (a) damages;
- (b) mutilates;

Offence of
damaging,
etc., any
chattel in
possession
of the
Board.

Amended by
No. 113 of
1965, s. 8.

(c) destroys; or

(d) removes from the possession of the Board, any picture, engraving, exhibit or other work of art that is in the possession of the Board at the time it is damaged, mutilated, destroyed or removed, is guilty of an offence and is liable on summary conviction to a fine of two hundred dollars or to imprisonment for a term of twelve months or to both the fine and the imprisonment.

(2) Where a person is convicted of an offence against the provisions of subsection (1) of this section, the Court convicting that person may, in addition to imposing any penalty, order the person to pay to the Board the full amount of the value of the picture, engraving, exhibit or work of art damaged, mutilated, destroyed or removed, as the case may be, and the amount so ordered is recoverable as if it were part of the penalty imposed notwithstanding that the total of the penalty and the amount exceeds the maximum penalty which may be imposed.

24. In any complaint preferred by the Board against a person who steals or injures, and in any proceedings instituted in relation to, any property vested in or under the care or control of the Board, it shall be sufficient to state generally that the property in respect of which the complaint is preferred or the proceedings are instituted, is the property of the Board.

Proceedings
by Board.

25. (1) The Board may offer and pay a reward to any person who gives information to the Board or any of its officers of the commission of an offence against this Act which leads to the conviction of a person for the offence.

Reward for
information
of
commission
of offence.
Amended by
No. 113 of
1965, s. 8.

(2) When proceedings are taken before a Court in respect of the offence if the person in respect of whom the information was given is convicted of the offence, the Court may in addition to imposing

any penalty or ordering an amount to be paid under subsection (2) of section twenty-three of this Act, order that person to pay to the Board on account of any reward which the Board has paid or is liable to pay under this section, the amount of the reward or a sum of forty dollars whichever is the lesser amount.

Selling or exposing for sale works of art in Art Gallery prohibited. Amended by No. 113 of 1965, s. 8; No. 28 of 1968, s. 6.

26. (1) Subject to the provisions of subsection (2) of this section, no person shall sell, offer for sale or expose for sale or permit or suffer to be sold, offered or exposed for sale, in the Art Gallery or in any other place that is for the time being under the sole management and control of the Board any work of art that belongs to him and is being exhibited in the Art Gallery or that other place, as the case may be.

Penalty: One hundred dollars.

(2) The provisions of this section do not apply to any work of art that is being so exhibited pursuant to an agreement or arrangement made by or on behalf of the State or the Board with the Commonwealth or any other State of the Commonwealth or foreign country or the trustees or governing body of any other art gallery.

Power of officers to represent Board.

27. (1) In proceedings in a Court of Petty Sessions, an officer of the Board appointed for the purpose generally or in a particular case in writing signed by the chairman may represent the Board in all respects as if he were the party concerned.

(2) Notwithstanding the provisions of this section, any person may make and prosecute a complaint of an offence against this Act.

Report.

28. (1) The Board shall on or before the thirtieth day of September in each year furnish to the Minister a report of the proceedings of the Board during the year ending on the preceding thirtieth day of June and containing a full account of the income and expenditure of the Board audited by the Auditor General.

(2) The Auditor General has, in respect of the account, all powers conferred on him by any law for the time being in force relating to the audit of public accounts.

(3) The Minister shall on receipt of the report cause a copy of it to be laid before each House of Parliament.

29. (1) The Governor may make regulations as he considers necessary, convenient or desirable to enable the Board to carry out its powers and duties under this Act or for better carrying out the objects and purposes of this Act.

Regulations.
Amended by
No. 113 of
1965, s. 8.
No. 28 of
1968, s. 7;

(2) Without prejudice to the generality of subsection (1) of this section the regulations may provide

- (a) for the conduct of proceedings at meetings of the Board;
- (b) for the form of the official seal of the Board and the manner in which it shall be kept and used;
- (c) for the management of the affairs of the Art Gallery and any branch art gallery or other place under the management and control of the Board;
- (d) for the admission to and the exclusion or expulsion from the Art Gallery or any part of it or any branch art gallery or other place under the management and control of the Board or any part thereof, of the public or any individual;
- (e) for specifying the conditions and restrictions upon and subject to which the public may be allowed to examine works of art and exhibits in the Art Gallery and any branch art gallery or other place under the management and control of the Board;
- (f) for preventing the handling, touching, defacing or marking of the works of art and exhibits in the possession of the Board;

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- (g) for the effectual use of the works of art and exhibits for the purpose of public education and enjoyment;
 - (h) for fixing penalties for any breach of a regulation not exceeding the sum of fifty dollars for any one offence.
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