



Western Australia

## **Arts and Culture Trust Act 2021**



# Arts and Culture Trust Act 2021

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Western Australia

## **Arts and Culture Trust Act 2021**

**An Act —**

- **to establish the Arts and Culture Trust; and**
- **to repeal the *Perth Theatre Trust Act 1979* and the *Perth Theatre Trust (Common Seal) Regulations 1980*; and**
- **to make consequential amendments to various Acts; and**
- **for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Arts and Culture Trust Act 2021*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 (other than sections 4 and 5) — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

### **3. Terms used**

In this Act —

***activity*** includes an event, performance, exhibition, demonstration, lecture, screening and production activity;

***Arts and Culture Trust Account*** means the Arts and Culture Trust Account established under section 60(1);

***arts organisation*** means any incorporated body or unincorporated group (however structured) that is principally engaged in —

- (a) conducting cultural or artistic activities; or
- (b) providing cultural or artistic services;

***Board*** means the Trust's board provided for in section 16(1);

***Board member*** has the meaning given in section 17(1);

***CEO*** has the meaning given in section 41(1);

***chairperson*** means the person designated under section 18(1) as the chairperson of the Board;

***committee*** means a committee appointed under section 34(1);

***Department CEO*** means the chief executive officer of the department of the Public Service principally assisting in the administration of this Act;

**deputy chairperson** means the person designated under section 18(1) as the deputy chairperson of the Board;

**LA Act** means the *Land Administration Act 1997*;

**misconduct**, in relation to a person who holds office as a Board member or the CEO, includes conduct that —

- (a) brings the Trust into disrepute; or
- (b) otherwise renders the person unfit to hold the office even though the conduct does not relate to a duty of the office;

**place** means any land, building or structure (whether permanent or temporary) or any part of any land, building or structure;

**production activity** means an activity (whether conducted in private or not) that involves or is related to the production, composition or development of any of the following (whether for display, presentation or distribution to the public or not) —

- (a) audio material, visual material or audio-visual material;
- (b) a work of art;
- (c) a literary, dramatic or musical work;
- (d) a dance or any other kind of performance;

**remuneration** has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

**resident company** means an arts organisation declared under section 5 to be a resident company for the purposes of this Act;

**staff member** means —

- (a) the CEO; or
- (b) a person appointed, employed or engaged as mentioned in section 52;

**ticketing services**, for an activity, means management services relating to the issue and sale of admission tickets for the activity;

**Trust** means the Arts and Culture Trust established under section 7(1);

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**Trust property** means —

- (a) any Trust venue; or
- (b) any other real or personal property —
  - (i) owned by, or leased to, the Trust; or
  - (ii) vested in, or placed under the care, control and management of, the Trust under a written law;

**Trust venue** means —

- (a) a place referred to in paragraph (a) of the definition of **venue**; or
- (b) any venue —
  - (i) owned by, or leased to, the Trust; or
  - (ii) vested in, or placed under the care, control and management of, the Trust under a written law;

**Trust venue programming** means the selection, procurement and scheduling of activities at Trust venues;

**unable to act**, in relation to a Board member, means unable to act as a Board member for any reason, including the following —

- (a) illness;
- (b) absence;
- (c) the operation of section 37;

**venue** means —

- (a) a place declared under section 4(1) to be a venue used, or intended to be used, wholly or partly for cultural or artistic purposes; or
- (b) any other place used, or intended to be used, wholly or partly for cultural or artistic purposes.

**4. Minister may declare places to be venues**

- (1) The Minister may, by notice published in the *Gazette*, declare a place to be a venue used, or intended to be used, wholly or partly for cultural or artistic purposes.
- (2) A declaration under this section may be expressed to have effect for a period specified in the declaration.

**5. Minister may declare arts organisations to be resident companies**

- (1) The Minister may, by notice published in the *Gazette*, declare an arts organisation to be a resident company for the purposes of this Act if the arts organisation —
  - (a) conducts activities primarily at 1 or more Trust venues; and
  - (b) receives funding from a department of the Public Service, or other agency or instrumentality of the State.
- (2) For the purposes of subsection (1), it does not matter whether or not the arts organisation —
  - (a) conducts activities other than at Trust venues; or
  - (b) is based in offices at a Trust venue.

**6. Act binds Crown**

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

## **Part 2 — Arts and Culture Trust**

### **7. Trust established**

- (1) The Arts and Culture Trust is established.
- (2) The Trust is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the Trust in its corporate name.

### **8. Trust may use trading names**

- (1) The Trust may use, and operate under, 1 or more trading names approved by the Minister.
- (2) A trading name can be —
  - (a) an abbreviation or adaptation of the Trust's corporate name; or
  - (b) a name other than the Trust's corporate name.
- (3) Notice of approval of a name under subsection (1) must be published in the *Gazette*.

### **9. Trust's status**

The Trust is an agent of the Crown and has the status, immunities and privileges of the Crown.

### **10. Trust's functions**

- (1) In this section —  
*promote*, in relation to an activity, includes attract, organise, commission, fund, invest in, support, market, advertise and act as project manager.
- (2) The Trust has the following functions —
  - (a) to establish, care for, control, manage, operate, maintain, develop and improve Trust venues and other Trust property;

- (b) to use, or authorise the use of, Trust venues and other Trust property for —
  - (i) production activities; or
  - (ii) any other activities of an artistic, cultural, recreational or educational nature; or
  - (iii) the purpose of public entertainment or recreation; or
  - (iv) any other purpose approved by the Minister; or
  - (v) any purpose ancillary to activities or purposes referred to in subparagraphs (i) to (iv);
- (c) to coordinate Trust venue programming and the use of Trust venues, and other Trust property, for activities or purposes referred to in paragraph (b);
- (d) to provide, maintain, improve and promote facilities, amenities and services at Trust venues for —
  - (i) the instruction, entertainment and convenience of the public; or
  - (ii) the effective operation of Trust venues;
- (e) to encourage, foster, promote and facilitate the use and enjoyment of Trust venues and other Trust property;
- (f) without limiting paragraph (e), to promote, or take part in promoting, activities conducted at Trust venues;
- (g) to promote public awareness of, and foster public interest in, matters relating or incidental to culture and the arts;
- (h) without limiting paragraph (g), to promote and provide educational and training activities in relation to culture and the arts;
- (i) to perform other functions consistent with the use and enjoyment of Trust venues as the Trust considers appropriate;

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- (j) to perform other functions conferred on the Trust under this Act or another written law;
  - (k) to perform other functions necessary or incidental to the functions mentioned in paragraphs (a) to (j).
- (3) In performing its functions, the Trust must —
- (a) recognise the role of resident companies and the contributions they make to culture and the arts in Western Australia; and
  - (b) seek to support resident companies in conducting their activities at Trust venues and, in particular, on matters relating to —
    - (i) the leasing and hiring out of Trust venues and other Trust property; and
    - (ii) Trust venue programming;and
  - (c) have regard to, and seek to implement, any objectives for Trust venues prescribed for the purposes of this paragraph, being matters that are of importance to the establishment, care, control, management, operation, maintenance, development or improvement of Trust venues.

**11. Trust's powers**

- (1) In this section —

***acquire*** includes taking on lease or licence or in any other manner in which an interest in property may be acquired;

***business arrangement*** means a company, a partnership, a trust, a joint venture, an arrangement or agreement for sharing profits or an arrangement or agreement for sponsorship;

***dispose of*** includes disposing of by way of lease or licence or in any other manner in which an interest in property may be disposed of;



***participate*** in a business arrangement includes form, promote, establish, enter into, manage, dissolve, wind up and do anything incidental to the business arrangement;

***work*** includes the following —

- (a) the development or redevelopment of an area of land;
  - (b) the construction, reconstruction or demolition of any building;
  - (c) the provision of audience accommodation, either seating or standing or both.
- (2) The Trust has all the powers it needs to perform its functions.
- (3) The Trust may, for the purposes of performing any of its functions, do all or any of the following —
- (a) acquire, hold, dispose of or otherwise deal in real or personal property;
  - (b) carry out, or arrange to be carried out, work in connection with the maintenance, development and improvement of any Trust venue and, in particular, for the purpose of making any Trust venue suitable for the activities or purposes referred to in section 10(2)(b);
  - (c) enter into a contract or other arrangement, including a contract or arrangement for the provision of services to the Trust;
  - (d) without limiting paragraph (c), enter into a contract or arrangement for any person to manage any Trust venue;
  - (e) provide, or permit any person to provide, refreshments (including liquor) at Trust venues and apply for, hold and dispose of any licence, permit or other authority required in connection with the provision of those refreshments;
  - (f) participate in a business arrangement and acquire, hold and dispose of shares, units or other interests in or relating to a business arrangement;

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- (g) cooperate with, and provide financial or other assistance to, other bodies and individuals;
- (h) produce and deal in any equipment, facilities or system associated with the performance of its functions;
- (i) develop and turn to account any technology, software, resource or intellectual property that relates to its functions and, for that purpose, apply for, hold, receive, exploit and dispose of any intellectual property;
- (j) provide and turn to account advertising opportunities or opportunities to participate in arrangements in the nature of advertising or having a purpose similar to advertising;
- (k) use its expertise and resources to provide consultancy, management, advisory or other services for a fee or otherwise;
- (l) without limiting paragraph (k), provide, for a fee or otherwise, ticketing services for any activity at a Trust venue or any place that is not a Trust venue;
- (m) require payment of rent, fees or other charges for, or in connection with —
  - (i) the hire or use of a Trust venue, or any part of a Trust venue, or any other Trust property; or
  - (ii) entry to a Trust venue or any part of a Trust venue; or
  - (iii) admission to any activity at a Trust venue; or
  - (iv) the parking of vehicles on or in any part of a Trust venue;
- (n) fix the amount of rent, fees or charges referred to in paragraphs (k), (l) and (m) with power to waive, reduce or refund the amount payable in particular cases;
- (o) produce and publish information on matters related to its functions;
- (p) appoint or engage agents or attorneys;
- (q) act as agent for other persons.

- (4) Subsections (2) and (3) are subject to sections 12, 13 and 14.
- (5) Subsection (3) does not limit subsection (2) or any of the Trust's other powers.
- (6) The Trust may —
  - (a) make any gift for a charitable purpose or any other purpose of benefit to the community or a section of the community; or
  - (b) accept any gift, bequest or other payment if it is absolute, or subject to conditions that the Trust would be able to satisfy.
- (7) In exercising any power under this section, the Trust may act in conjunction with —
  - (a) any person or firm, or public authority; or
  - (b) any department of the Public Service, or other agency or instrumentality, of this State, another State or Territory or the Commonwealth.

## **12. General restrictions on Trust's powers**

- (1) The Trust's power to dispose of real property does not extend to the transfer of Crown land for an estate in fee simple.
- (2) If any real property is vested in or placed under the care, control and management of the Trust under a written law, the operation of section 11(3)(a) in relation to the property is subject to —
  - (a) the conditions upon which it is vested in or placed under the care, control and management of the Trust; and
  - (b) in the case of land to which the LA Act applies — that Act.
- (3) The Trust must not exercise the following powers without the Minister's written approval —
  - (a) the power conferred by section 11(3)(a) to acquire or dispose of real property;

- (b) the power conferred by section 11(3)(d).

**13. Requirement for approval to participate in business arrangements**

- (1) The Trust must not exercise a power conferred by section 11(3)(f) in relation to a business arrangement unless the terms and conditions of that business arrangement are terms and conditions approved by the Minister and the Treasurer in respect of —
  - (a) that business arrangement; or
  - (b) business arrangements of that class; or
  - (c) business arrangements generally.
- (2) The Treasurer may, by written notice given to the Trust, exempt any business arrangement, or class of business arrangement, from the operation of subsection (1) either unconditionally or on conditions specified in the notice.
- (3) A notice under subsection (2) may be revoked or amended by the Treasurer by written notice given to the Trust.
- (4) The Treasurer may also give directions to be complied with generally by the Trust in the exercise of the power referred to in subsection (1).

**14. Requirement for approval to provide ticketing services for activities not at Trust venues**

- (1) The Trust must not exercise the power conferred by section 11(3)(l) to provide ticketing services for any activity at any place that is not a Trust venue without the Minister's written approval.
- (2) The Minister may, by written notice given to the Trust, exempt ticketing services for any activity, or class of activities, at any place, or class of places, from the operation of subsection (1) either unconditionally or on conditions specified in the notice.

- (3) A notice under subsection (2) may be revoked or amended by the Minister by written notice given to the Trust.
- (4) The Minister may also give directions to be complied with generally by the Trust in the exercise of the power referred to in subsection (1).

**15. Delegation**

- (1) The Trust may delegate any power or duty of the Trust under another provision of this Act to —
  - (a) a Board member; or
  - (b) a staff member; or
  - (c) a committee.
- (2) The delegation must be in writing executed by the Trust.
- (3) A person or committee to whom or which a power or duty is delegated under this section cannot delegate the power or duty.
- (4) A person or committee exercising or performing a power or duty that has been delegated to the person or committee under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Trust to perform a function through a staff member or an agent.
- (6) This section does not apply to the execution of documents but authority to execute documents on behalf of the Trust can be given under section 40(5).

## **Part 3 — Administration of the Trust**

### **Division 1 — The Board**

#### **Subdivision 1 — How the Board is constituted**

#### **16. Board is governing body**

- (1) The Trust must have a board.
- (2) The Board is the governing body of the Trust and, in the name of the Trust, must perform the Trust's functions.

#### **17. Board membership**

- (1) The Board consists of 9 persons, each of whom is appointed by the Minister as a **Board member**.
- (2) The Minister must ensure that —
  - (a) at least 3 Board members have, in the opinion of the Minister, knowledge of and experience in 1 or more of the following —
    - (i) commerce;
    - (ii) law;
    - (iii) financial management;
    - (iv) human resource management;
    - (v) marketing;and
  - (b) at least 2 Board members have, in the opinion of the Minister, knowledge of and experience in infrastructure planning and management; and
  - (c) each other Board member has, in the opinion of the Minister, knowledge of and experience in a field related to the Trust's functions.

- (3) Neither the CEO nor the Department CEO is eligible to be appointed as a Board member.

**18. Chairperson and deputy chairperson**

- (1) The Minister must designate a Board member to be the chairperson of the Board and another to be the deputy chairperson of the Board.
- (2) If the chairperson is unable to act or if there is no chairperson, the deputy chairperson must act in the chairperson's place.
- (3) An act or omission of the deputy chairperson acting in the chairperson's place cannot be questioned on the ground that the occasion to act in the chairperson's place had not arisen or had ceased.

**19. Term of office**

A Board member —

- (a) holds office for the period, not exceeding 4 years, specified in the instrument of appointment; and
- (b) is eligible for reappointment once or more than once.

**20. Casual vacancies, resignation and removal from office**

- (1) The office of a Board member becomes vacant if the Board member —
- (a) dies, resigns or is removed from office under this section; or
- (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
- (d) is convicted of an offence under section 36(1) or (2) or 67(1).

- (2) A Board member may at any time resign from office by written notice given to the Minister.
- (3) Subject to subsection (4), the resignation takes effect on the day on which it is received by the Minister.
- (4) If the resignation specifies a day on which it is to have effect that is later than the day on which the resignation is received by the Minister, the resignation takes effect on the day specified in the resignation.
- (5) The Minister may remove a Board member from office —
  - (a) on the grounds of neglect of duty; or
  - (b) on the grounds of misconduct or incompetence; or
  - (c) on the grounds of mental or physical incapacity, other than temporary illness, impairing the performance of the Board member's duties; or
  - (d) on the grounds of absence, without leave, from 3 consecutive meetings of the Board of which the Board member has had notice; or
  - (e) for any other reasonable cause.

**21. Extension of term of office**

If the office of a Board member becomes vacant because the Board member's term of office expires by effluxion of time, the Board member continues to be a Board member during that vacancy until the earlier of the following —

- (a) the end of the period of 3 months immediately following the expiry of the term of office;
- (b) the vacancy being filled;
- (c) the Board member resigning;
- (d) the Board member being removed from office under section 20.



**22. Leave of absence**

The Board may, on any terms and conditions it thinks fit, grant a Board member leave to be absent from office.

**23. Alternate Board members**

- (1) If a Board member is unable to act, the Minister may appoint another person as an alternate Board member to act temporarily in the Board member's place.
- (2) Subsection (1) does not apply in relation to the chairperson.
- (3) If the deputy chairperson is acting in the chairperson's place, the Minister may, under subsection (1), appoint another person as an alternate Board member to act temporarily in the deputy chairperson's place.
- (4) While acting in accordance with the appointment, the alternate Board member is taken to be, and to have any entitlement of, a Board member.

**24. Remuneration and allowances**

A Board member is entitled to be paid any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

**Subdivision 2 — Board meetings**

**25. Holding meetings**

- (1) The first meeting of the Board must be convened by the chairperson, and subsequent meetings are to be held at times and places determined by the Board.
- (2) The Board must meet at least 4 times a year.
- (3) A special meeting of the Board may at any time be convened by the chairperson.

**26. Quorum**

The quorum for a meeting of the Board is 5 members of the Board.

**27. Presiding Board members**

- (1) The chairperson, if present, must preside at a meeting of the Board.
- (2) If neither the chairperson, nor the deputy chairperson acting as the chairperson, is presiding under subsection (1), the Board members present at the meeting must elect 1 of their number to preside.

**28. Procedure at meetings**

The Board may determine its own meeting procedures to the extent that they are not fixed by this Act.

**29. Voting**

- (1) At a meeting of the Board, each Board member present has a deliberative vote unless section 37 prevents the Board member from voting.
- (2) In the case of an equality of votes, the presiding Board member has a casting vote in addition to a deliberative vote.
- (3) A question is resolved according to how a majority of the votes are cast.

**30. Holding meetings remotely**

The presence of a Board member at a meeting of the Board need not be by attendance in person but may be by that Board member and each other Board member at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

**31. Resolution without meeting**

A resolution in writing signed or otherwise assented to in writing by each Board member has the same effect as if it had been passed at a meeting of the Board.

**32. CEO and Department CEO may attend meetings**

(1) In this section —

*relevant person* means —

- (a) the CEO; or
  - (b) a person authorised in writing by the CEO to attend a meeting of the Board as the representative of the CEO; or
  - (c) the Department CEO; or
  - (d) a person authorised in writing by the Department CEO to attend a meeting of the Board as the representative of the Department CEO.
- (2) Subject to subsection (3), a relevant person may attend meetings of the Board and participate in its deliberations but cannot vote at a meeting of the Board.
- (3) If the Board requests the CEO, or a person referred to in paragraph (b) of the definition of *relevant person*, not to attend a particular meeting, or part of a particular meeting, of the Board, the CEO or other person (as the case may be) must comply with the request.
- (4) Sections 30, 36, 37 and 38 apply, with any necessary modifications, to a relevant person in relation to attendance at meetings of the Board as if the relevant person were a Board member.

**33. Minutes**

The Board must cause accurate minutes to be kept of the proceedings at each of its meetings.

**Subdivision 3 — Committees**

**34. Committees**

- (1) The Board may —
  - (a) appoint committees to investigate and advise the Trust on any aspect of its functions or assist the Trust in the performance of its functions; and
  - (b) discharge or alter any committee it has appointed.
- (2) A committee may include persons who are not Board members but must include at least 1 Board member.
- (3) The Board may give directions to a committee on the following matters —
  - (a) the functions to be performed by the committee;
  - (b) the committee's procedures;
  - (c) reporting by the committee on the performance of its functions.
- (4) A committee must comply with a direction of the Board.
- (5) A committee may determine its own procedures but they must be consistent with any directions of the Board and the terms of any delegation under which the committee is acting.
- (6) A committee must —
  - (a) keep minutes of its meetings to a standard approved by the Board; and
  - (b) provide the Board with a copy of the minutes of each meeting.

**35. Remuneration and allowances**

A member of a committee is entitled to be paid any remuneration and allowances that the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

#### **Subdivision 4 — Disclosure of interests**

#### **36. Disclosure of material personal interests**

- (1) A Board member who has a material personal interest in a matter being considered or about to be considered by the Board must, as soon as possible after the relevant facts have come to the Board member's knowledge, disclose the nature of the interest at a meeting of the Board.

Penalty for this subsection: a fine of \$10 000.

- (2) A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

Penalty for this subsection: a fine of \$10 000.

- (3) Subsection (2) applies to a person who is a member of a committee and also a Board member even though the person has already disclosed the nature of the interest at a meeting of the Board.

- (4) A disclosure under subsection (1) or (2) must be recorded in the minutes of the meeting.

#### **37. Voting by interested member**

- (1) A Board member or a member of a committee who has a material personal interest in a matter being considered or about to be considered by the Board or the committee —
- (a) must not vote, whether at a meeting or otherwise, on the matter; and
  - (b) must not be present while the matter is being considered at a meeting.

- (2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 38 in respect of the matter, whether relating to that member or a different member.

**38. Section 37 may be declared inapplicable**

Section 37 does not apply if —

- (a) a Board member or a member of a committee has disclosed under section 36(1) or (2) an interest in a matter; and
- (b) the Board or committee, as the case requires, has at any time passed a resolution that —
- (i) specifies the member, the interest and the matter; and
- (ii) states that the members voting for the resolution are satisfied that the interest is so trivial or insignificant as to be unlikely to influence the disclosing member's conduct and should not disqualify the member from considering or voting on the matter.

**39. Quorum if s. 37 applies**

- (1) Despite section 26, if a Board member is disqualified under section 37, a quorum is present during the consideration of the matter if at least 4 Board members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.
- (2) The Minister may deal with a matter to the extent that the Board cannot deal with it because of subsection (1).

**Subdivision 5 — Execution of documents**

**40. Execution of documents by Trust**

- (1) The Trust must have a common seal.

- (2) A document is duly executed by the Trust if —
  - (a) the common seal of the Trust is applied to it in accordance with subsections (3) and (4); or
  - (b) it is signed on behalf of the Trust by a person or persons authorised to do so under subsection (5).
- (3) The common seal of the Trust must not be applied to any document except as authorised by the Trust.
- (4) The common seal of the Trust must be applied to a document in the presence of any 2 Board members, each of whom must sign the document to attest that the common seal was so applied.
- (5) The Trust may, by writing under its common seal, authorise 1 or more Board members or staff members to sign documents on behalf of the Trust, either generally or subject to the conditions that are specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section must be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the Trust, it must be presumed that the seal is the common seal of the Trust until the contrary is shown.

## **Division 2 — Staff of the Trust**

### **Subdivision 1 — The CEO**

#### **41. CEO**

- (1) The Trust must have a chief executive officer (the *CEO*).
- (2) The CEO must administer the day-to-day operations of the Trust subject to the control of the Board.

**42. Effect of Trust being SES organisation**

While the Trust is an SES organisation under the *Public Sector Management Act 1994*, the CEO is —

- (a) its chief executive officer under that Act; or
- (b) if section 44(2) of that Act applies, its chief employee under that Act.

**43. Effect of Trust becoming non-SES organisation**

If the Trust becomes a non-SES organisation under the *Public Sector Management Act 1994*, the CEO is to be its chief employee under that Act.

**44. Appointment of CEO**

- (1) If section 42(a) applies, the CEO must be appointed and hold office under the *Public Sector Management Act 1994* Part 3.
- (2) If section 42(b) or 43 applies —
  - (a) the CEO must be appointed by the Trust; and
  - (b) Subdivision 2 has effect with respect to the tenure, salary and conditions of service of the CEO and the other matters provided for in that Subdivision.

**Subdivision 2 — Provisions applying to the CEO if section 42(b) or 43 applies**

**45. Application**

This Subdivision applies if section 42(b) or 43 applies.

**46. Term of office**

The CEO holds office for a term, not exceeding 5 years, fixed by the instrument of appointment and is eligible for reappointment once or more than once.



**47. Remuneration and allowances**

Subject to the *Salaries and Allowances Act 1975*, the CEO —

- (a) is entitled to be paid remuneration and allowances at such rates per annum as the Trust determines on the recommendation of the Public Sector Commissioner; and
- (b) has the same annual leave, personal leave and long service leave entitlements as a permanent officer of the Public Service.

**48. Casual vacancies, resignation and removal from office**

- (1) The office of CEO becomes vacant if the CEO —
  - (a) dies, resigns or is removed from office under this section; or
  - (b) is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
  - (d) is convicted of an offence under section 67(1).
- (2) The CEO may at any time resign from office by written notice given to the Trust.
- (3) Subject to subsection (4), the resignation takes effect on the day on which it is received by the Trust.
- (4) If the resignation specifies a day on which it is to have effect that is later than the day on which the resignation is received by the Trust, the resignation takes effect on the day specified in the resignation.
- (5) The Trust may remove the CEO from office —
  - (a) on the grounds of neglect of duty; or
  - (b) on the grounds of misconduct or incompetence; or

- (c) on the grounds of mental or physical incapacity, other than temporary illness, impairing the performance of the CEO's duties; or
- (d) for any other reasonable cause.

**49. Entitlements of public service officer as CEO**

- (1) If a person occupied an office in the Public Service immediately before being appointed to the office of CEO, the person retains existing and accruing entitlements based upon service as if service as the CEO were a continuation of service in the office in the Public Service.
- (2) If a person ceases to be the CEO and is appointed to an office in the Public Service, the person's service as the CEO must be regarded as service in the Public Service for the purposes of determining the person's rights as a public service officer.

**50. Other conditions of service**

Subject to this Division, the Trust may, on the recommendation of the Public Sector Commissioner, determine other terms and conditions of service (if any) that apply to the CEO.

**51. Acting CEO**

- (1) If the CEO is unable to act or the office of CEO is vacant, the Trust may appoint a person to act as the CEO.
- (2) A person cannot act under an appointment under subsection (1) for a continuous period exceeding 12 months.
- (3) A person acting as the CEO holds office on the terms and conditions of appointment, including as to remuneration, determined by the Trust.
- (4) The remuneration of a person acting as the CEO cannot exceed that of the holder of the office or, if the office is vacant, the most recent holder of the office.

- (5) An act or omission of a person acting as the CEO cannot be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

### **Subdivision 3 — Other staff of the Trust**

#### **52. Other staff of Trust**

- (1) Public service officers may be appointed under the *Public Sector Management Act 1994* Part 3 to enable the Trust to perform its functions.
- (2) The Trust may, subject to any relevant written law or any binding award, order or industrial agreement under the *Industrial Relations Act 1979*, employ or engage and manage staff otherwise than under the *Public Sector Management Act 1994* Part 3.
- (3) This section does not detract from the power that the *Public Sector Management Act 1994* section 100 gives the employing authority of the Trust to engage a person under a contract for services or appoint a person on a casual employment basis.
- (4) The Trust may, by arrangement on such terms as are agreed with the relevant parties, make use of the services of a person employed by another person.

#### **53. Use of government staff and facilities**

- (1) The Trust may, by arrangement with the relevant employing authority, make use, either full-time or part-time, of the services of any officer or employee —
- (a) in the Public Service; or
  - (b) in a State agency; or
  - (c) otherwise in the service of the State.
- (2) The Trust may, by arrangement with a department of the Public Service or a State agency, make use of any facilities of the department or agency.

- (3) An arrangement under subsection (1) or (2) must be made on terms agreed to by the parties.

**54. Agreements to recover cost of employing or engaging staff**

The Trust may, by agreement with a person using a Trust venue to conduct an activity, recover from the person the whole or part of the cost of employing or engaging staff for the purposes of the Trust venue while it is being used by the person to conduct the activity.

## **Part 4 — Accountability and financial provisions**

### **Division 1 — Accountability**

#### **55. Minister may give directions**

- (1) The Minister may give written directions to the Trust with respect to the performance of its functions, either generally or in relation to a particular matter, and the Trust must give effect to any such direction.
- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament within 14 days after the day on which the direction is given.
- (3) The text of a direction under subsection (1) must be included in the annual report submitted by the accountable authority of the Trust under the *Financial Management Act 2006* Part 5.

#### **56. Minister to be kept informed**

The Trust must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Trust, including the assets and liabilities, profits and losses and prospects of the Trust; and
- (b) give the Minister reports and information that the Minister requires for the making of informed assessments of matters referred to in paragraph (a).

#### **57. Minister to have access to information**

- (1) In this section —  
*document* includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;  
*information* means information specified, or of a description specified, by the Minister that relates to the Trust's functions.

- (2) The Minister is entitled —
  - (a) to have information in the possession of the Trust; and
  - (b) if the information is in or on a document, to have, and make and retain copies of, that document.
- (3) For the purposes of subsection (2), the Minister may —
  - (a) request the Trust to give information to the Minister; and
  - (b) request the Trust to give the Minister access to information; and
  - (c) request the use of a staff member to obtain the information and give it to the Minister.
- (4) The Trust must comply with a request under subsection (3).

**58. Protection for disclosure or compliance with directions**

The Trust or another person performing a function under this Act is not liable —

- (a) in respect of any claim arising as a consequence of the disclosure of information or documents under —
    - (i) section 56, 57 or 65; or
    - (ii) a requirement imposed under the *Financial Management Act 2006* or the *Auditor General Act 2006*;
- or
- (b) for the fact of having done or omitted a thing that is required to be done or omitted by a direction given under this Act.

## **Division 2 — Financial provisions**

### **59. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in relation to the Trust and its operations.

### **60. Arts and Culture Trust Account**

- (1) An account called the Arts and Culture Trust Account must be established as an agency special purpose account under the *Financial Management Act 2006* section 16.
- (2) Money received by the Trust must be credited to, and money paid by the Trust must be charged to, the Arts and Culture Trust Account.

### **61. Trust's funds**

- (1) Subject to subsection (2), the funds available for the purposes of enabling the Trust to perform its functions under this or any other Act consist of money that is, under this or any other Act, lawfully received by or made available to, the Trust.
- (2) If any money has been accepted by the Trust upon trust or lawful condition, the Trust must apply the money in accordance with the trust or condition.

### **62. Borrowing**

The Trust may, with the Treasurer's prior approval —

- (a) borrow or re-borrow money; and
- (b) otherwise arrange for financial accommodation to be extended to the Trust.

**63. Guarantees by Treasurer**

- (1) The Treasurer, on the Minister's recommendation, may, in the name and on behalf of the State, guarantee the payment of any money payable by the Trust in respect of money borrowed by it under section 62.
- (2) A guarantee must be in a form, and contain terms and conditions, determined by the Treasurer.
- (3) Before a guarantee is given, the Trust must —
  - (a) give the Treasurer any security the Treasurer requires; and
  - (b) execute all instruments that are necessary for the purpose.
- (4) The Treasurer may fix charges to be paid by the Trust to the credit of the Consolidated Account in respect of a guarantee given under this section.

**64. Effect of guarantee**

- (1) The due payment of money under a guarantee given under section 63 must be —
  - (a) made by the Treasurer; and
  - (b) charged to, and paid out of, the Consolidated Account, which this subsection appropriates accordingly.
- (2) The Treasurer must cause to be credited to the Consolidated Account any amounts received or recovered from the Trust or otherwise in respect of any payment made by the Treasurer under a guarantee given under section 63.

**65. Notice of financial difficulty**

- (1) The Trust must notify the Minister if it forms the opinion that it is unable to, or will be unlikely to be able to, satisfy any of its financial obligations from the financial resources available to it,



or likely to be available to it, at the time the financial obligation is due.

- (2) The notice must be in writing, giving reasons for the Trust's opinion.
- (3) Within 7 days after receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the Trust for the purpose of determining what action is required to ensure that the Trust is able to satisfy the relevant financial obligation when it is due; and
  - (b) initiate such action as is required to ensure that the Trust is able to satisfy the relevant financial obligation when it is due.
- (4) For the purposes of subsection (3), the Minister may give the Trust a direction under section 55 requiring the Trust to cease or limit the performance of any function.

## **Part 5 — Miscellaneous**

### **66. Protection from liability for wrongdoing**

- (1) No action or claim for damages lies against a person other than the Trust for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), neither the Trust nor the State is relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

### **67. Confidentiality**

- (1) A person must not, directly or indirectly, use or disclose any information obtained by the person because of —
  - (a) the person's office, position, employment or engagement under or for the purposes of this Act; or
  - (b) any disclosure made to the person under or for the purposes of this Act.

Penalty for this subsection: a fine of \$10 000.

- (2) Subsection (1) does not apply in relation to the use or disclosure of information that is already in the public domain.
- (3) A person does not commit an offence under subsection (1) if the use or disclosure of the information is authorised under section 68(1).

**68. Authorised use or disclosure of information**

- (1) For the purposes of this Act, the use or disclosure of information is authorised if the information is used or disclosed in good faith in any of the following circumstances —
  - (a) for the purpose of, or in connection with, performing a function under this or any other Act;
  - (b) as otherwise authorised or required under or for the purposes of this Act;
  - (c) under another law;
  - (d) to a court or other person or body acting judicially in the course of proceedings before the court, person or body;
  - (e) under an order of a court or other person or body acting judicially;
  - (f) any other circumstances prescribed for the purposes of this subsection.
- (2) If the use or disclosure of information is authorised under subsection (1) —
  - (a) no civil or criminal liability is incurred in respect of the use or disclosure; and
  - (b) the use or disclosure must not be regarded as —
    - (i) a breach of any duty of confidentiality or secrecy imposed by law; or
    - (ii) a breach of professional ethics or standards or any principles of conduct applicable to a person's employment; or
    - (iii) unprofessional conduct.

**69. Laying documents before House of Parliament not sitting**

- (1) This section applies if —
  - (a) a provision of this Act requires the Minister to cause a document to be laid before each House of Parliament within a period; and

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- (b) at the beginning of the period, a House of Parliament is not sitting; and
  - (c) in the Minister's opinion, the House will not sit before the end of the period.
- (2) The Minister must send the document to the Clerk of the House before the end of the period.
  - (3) When the document is sent to the Clerk of the House it is taken to have been laid before the House.
  - (4) The laying of the document that is taken to have occurred under subsection (3) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the document.

**70. General regulations**

- (1) The Governor may make regulations prescribing matters —
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate the following —
  - (a) the care, control, management, maintenance, development and improvement of Trust venues and other Trust property;
  - (b) the use and hiring out of Trust venues or any part of a Trust venue;
  - (c) the conduct of activities at Trust venues, including in relation to noise levels, lighting and pyrotechnics;
  - (d) the times at which a Trust venue, or any part of a Trust venue, must be open or closed to the public;
  - (e) the maintenance of good order at Trust venues;

- (f) the duties and conduct of persons at Trust venues;
  - (g) the admission of persons, vehicles and animals to Trust venues;
  - (h) the things that may be brought into or onto Trust venues;
  - (i) without limiting paragraph (h), the taking of liquor into or onto, and its consumption at, Trust venues;
  - (j) the removal of persons found committing offences against the regulations or causing annoyance or inconvenience to other persons at Trust venues;
  - (k) the appointment of authorised persons and their powers in connection with the operation and enforcement of the regulations;
  - (l) the reservation of any part of a Trust venue for separate or exclusive use specified in the regulations;
  - (m) private trading at Trust venues or any part of a Trust venue;
  - (n) without limiting section 11 or 71, the imposition and payment of fees and charges;
  - (o) the affairs, business and management of the Trust.
- (3) The regulations may provide that contravention of a regulation is an offence and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$5 000.

#### **71. Traffic regulations**

- (1) In this section —  
*authorised person* means a person appointed under regulations mentioned in section 70(2)(k).
- (2) Without limiting section 70, the regulations may provide for, authorise, prescribe, require, prohibit, restrict or otherwise regulate the following —
- (a) the use of vehicles on or in any part of a Trust venue;

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- (b) the control, supervision and management of parking or standing areas on or in any part of a Trust venue.
  - (3) The regulations may —
    - (a) include provisions as to speed, manner of driving, class of vehicles, routes, entrances and exits, one-way traffic, noise, parking and standing and the control of traffic generally; and
    - (b) provide for the payment of fees to the Trust in respect of the parking of vehicles on or in any part of a Trust venue and the determination and collection of those fees; and
    - (c) provide for the issue of permits to park vehicles on or in any part of a Trust venue for periods, and on other terms and conditions specified in the permits, and the amendment, suspension or revocation of those permits; and
    - (d) provide for the display, erection or marking of signs for the purposes of controlling traffic and the protection of those signs, and any equipment relating to parking and standing areas, against misuse, damage or interference; and
    - (e) require a person in charge of a vehicle on or in any part of a Trust venue to —
      - (i) obey the orders and directions of an authorised person given for the purposes of controlling traffic; or
      - (ii) if requested to do so by an authorised person who reasonably suspects that the person has committed an offence against the regulations, give their name and address to the authorised person;
- and

- (f) prescribe the following —
  - (i) the circumstances under which an authorised person may remove a vehicle, or cause it to be removed, from any area of a Trust venue to a place specified in the regulations (whether within the Trust venue or not);
  - (ii) the scale of fees to be paid to the Trust to recover the vehicle from the place;
  - (iii) the circumstances in which the Trust may hold the vehicle until the fees are paid;

and

- (g) prescribe evidentiary provisions in relation to speed measuring equipment and the use of that equipment; and
- (h) prohibit the removal by any person, other than the driver of a vehicle in respect of which an offence against a regulation is alleged to have been committed, of any notice relating to that offence attached to the vehicle or left in or on the vehicle by a person authorised under the regulations to leave the notice.

**72. Review of Act**

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
  - (a) as soon as practicable after the 5<sup>th</sup> anniversary of the day on which this section comes into operation; and
  - (b) after that, at intervals of not more than 10 years.
- (2) The review must address the following —
  - (a) the effectiveness of the operations of the Trust;
  - (b) the need for the continuation of the functions of the Trust;
  - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.

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- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after the report is prepared, but not later than 12 months after the 5<sup>th</sup> anniversary or the expiry of the period of 10 years, as the case may be.



## **Part 6 — Repeals and consequential amendments**

### **Division 1 — Repeals**

#### **73. Written laws repealed**

- (1) The *Perth Theatre Trust Act 1979* is repealed.
- (2) The *Perth Theatre Trust (Common Seal) Regulations 1980* are repealed.

### **Division 2 — Consequential amendments**

#### **74. Constitution Acts Amendment Act 1899 amended**

- (1) This section amends the *Constitution Acts Amendment Act 1899*.
- (2) In Schedule V Part 3 delete the item for The Perth Theatre Trust established by the *Perth Theatre Trust Act 1979*.
- (3) In Schedule V Part 3 insert in alphabetical order:

The Arts and Culture Trust established under the *Arts and Culture Trust Act 2021*.

#### **75. Financial Management Act 2006 amended**

- (1) This section amends the *Financial Management Act 2006*.
- (2) In Schedule 1 delete the item for Perth Theatre Trust.
- (3) In Schedule 1 insert in alphabetical order:

Arts and Culture Trust

**76. *Public Sector Management Act 1994* amended**

(1) This section amends the *Public Sector Management Act 1994*.

(2) Before Schedule 2 item 3 insert:

1 Arts and Culture Trust, established under the *Arts and Culture Trust Act 2021*

(3) Delete Schedule 2 item 35.

**77. *State Superannuation (Transitional and Consequential Provisions) Act 2000* amended**

(1) This section amends the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.

(2) Delete section 57.

**78. *Statutory Corporations (Liability of Directors) Act 1996* amended**

(1) This section amends the *Statutory Corporations (Liability of Directors) Act 1996*.

(2) In Schedule 1 delete the item for Perth Theatre Trust.

## Part 7 — Transitional and savings provisions

### Division 1 — Preliminary

#### 79. Terms used

In this Part —

**Arts and Culture Trust** means the Arts and Culture Trust established under section 7(1);

**asset** —

- (a) means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description; and
- (b) includes any money, security, chose in action or document;

**commencement day** means the day on which section 73(1) comes into operation;

**liability** means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

**Perth Theatre Trust** means the Perth Theatre Trust established under the repealed Act;

**repealed Act** means the *Perth Theatre Trust Act 1979* as it was in force immediately before commencement day;

**right** means any right, power, privilege or immunity whether actual, prospective or contingent;

**this Part** includes regulations referred to in section 95(2).

#### 80. **Interpretation Act 1984 not affected**

This Part is in addition to the provisions of the *Interpretation Act 1984* and, unless the contrary intention appears, does not

limit or otherwise affect the operation of those provisions in relation to the repeals effected by section 73.

### **Division 2 — Perth Theatre Trust abolished**

#### **81. Perth Theatre Trust abolished**

On commencement day the Perth Theatre Trust is abolished and the trustees of the Perth Theatre Trust go out of office.

### **Division 3 — Transfer of the Perth Theatre Trust's assets, rights and liabilities**

#### **82. Assets, rights and liabilities**

- (1) On commencement day —
  - (a) the assets and rights of the Perth Theatre Trust immediately before commencement day are assigned to and become assets and rights of the Arts and Culture Trust; and
  - (b) the liabilities of the Perth Theatre Trust immediately before commencement day are assigned to and become liabilities of the Arts and Culture Trust.
- (2) On and after commencement day, any proceedings that immediately before commencement day might have been brought or continued by the Perth Theatre Trust may be brought or continued by the Arts and Culture Trust.
- (3) On and after commencement day, any remedy that immediately before commencement day might have been available against or to the Perth Theatre Trust is available against or to the Arts and Culture Trust.

#### **83. Perth Theatre Trust Account**

- (1) On commencement day, any money standing to the credit of the Perth Theatre Trust Account referred to in section 23(2) of the repealed Act (the *former account*) must be credited to the Arts

and Culture Trust Account, and the former account must then be closed.

- (2) Money referred to in subsection (1) may be applied —
  - (a) in the payment of any liabilities of the former account arising before commencement day; and
  - (b) for the purposes of this Act.
- (3) The Arts and Culture Trust Account must be credited with any money payable to the former account before commencement day that is paid on or after commencement day.
- (4) If in a contract, agreement, instrument or other document there is a reference to the former account, that reference is, unless the context otherwise requires, to be read or to have effect from commencement day as if it were a reference to the Arts and Culture Trust Account.

#### **84. Investments**

- (1) The investment of any money that was authorised under section 23 of the repealed Act immediately before commencement day continues to be authorised on and after commencement day as if that Act had not been repealed.
- (2) Income derived from the invested money, and any money that ceases to be invested, must be credited to the Arts and Culture Trust Account.

#### **85. Reserves**

- (1) This section applies to any Crown land that, immediately before commencement day, was a reserve under the LA Act section 41 for which the Perth Theatre Trust was the management body under the LA Act section 46(1).

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**Part 7** Transitional and savings provisions

**Division 3** Transfer of the Perth Theatre Trust's assets, rights and liabilities

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- (2) On commencement day —
- (a) Crown land to which this section applies is taken to be a reserve under the LA Act section 41 for the purposes of this Act; and
  - (b) the Arts and Culture Trust is taken to be the management body of the reserve under the LA Act section 46(1).
- (3) For the purposes of section 86 and the purposes of the LA Act —
- (a) subsection (2)(a) must be treated as if it were an order made under the LA Act section 51 changing the purpose of the reserve; and
  - (b) subsection (2)(b) must be treated as if it were —
    - (i) an order made under the LA Act section 50(1)(a) revoking the management order placing the care, control and management of the reserve with the Perth Theatre Trust and specifying that any interests that existed in, or any caveats that existed in respect of, the reserve immediately before commencement day continue to exist in respect of the reserve on and after commencement day; and
    - (ii) a management order made under the LA Act section 46(1) placing the care, control and management of the reserve with the Arts and Culture Trust subject to any conditions (with the changes necessary to take account of differences as to the purpose and management body) to which the management order referred to in subparagraph (i) was subject immediately before commencement day.

**86. Registration of documents**

- (1) In this section —  
*relevant official* means —
- (a) the Registrar of Titles under the *Transfer of Land Act 1893*; or
  - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or
  - (c) any other person authorised by a written law to record and give effect to the registration of documents.
- (2) A relevant official must —
- (a) take notice of this Part; and
  - (b) record and register in the appropriate manner the documents necessary to give effect to this Part.

**87. Exemption from State tax**

- (1) In this section —  
*State tax* includes —
- (a) duty chargeable under the *Duties Act 2008*; and
  - (b) any other tax, duty, fee, levy or charge under a law of the State.
- (2) State tax is not payable in relation to —
- (a) anything that occurs by operation of this Part; or
  - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) The Minister may certify in writing that —
- (a) a specified thing occurred by operation of this Part; or

- (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

**Division 4 — Chief executive officer and other staff of the Perth Theatre Trust**

**88. Chief executive officer of Perth Theatre Trust**

- (1) On and after commencement day, the person who immediately before commencement day occupied the office of chief executive officer of the Perth Theatre Trust continues in office, under this Act and the *Public Sector Management Act 1994*, as the CEO.
- (2) Subject to the *Public Sector Management Act 1994*, the person's employment as the CEO continues to be governed by the terms and conditions of employment that applied immediately before commencement day to the person as the chief executive officer of the Perth Theatre Trust.
- (3) Except as otherwise agreed by the person referred to in subsection (1), the operation of that subsection does not —
  - (a) affect the person's remuneration; or
  - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, personal leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of the person's service.



**89. Other staff**

- (1) A person who immediately before commencement day was a public service officer appointed under the *Public Sector Management Act 1994* Part 3 to enable the Perth Theatre Trust to perform its functions is, on and after commencement day, taken to be a public service officer appointed under that Act for the purposes of section 52(1) of this Act on the same terms and conditions that applied to the person immediately before commencement day.
- (2) A person who immediately before commencement day was appointed by the Perth Theatre Trust under section 17(1)(b) of the repealed Act is, on and after commencement day, taken to have been employed by the Arts and Culture Trust under section 52(2) of this Act on the same terms and conditions that applied to the person immediately before commencement day.
- (3) A person who immediately before commencement day was employed on a casual or temporary basis by the Perth Theatre Trust under section 17A(1) of the repealed Act is, on and after commencement day, taken to have been employed by the Arts and Culture Trust under section 52(2) of this Act on the same terms and conditions that applied to the person immediately before commencement day.
- (4) Except as otherwise agreed by a person referred to in this section, the operation of this section does not —
  - (a) affect the person's remuneration; or
  - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, personal leave or any other leave; or
  - (c) affect any rights under a superannuation scheme; or
  - (d) interrupt the continuity of the person's service.

### **Division 5 — Continuing effect of things done**

#### **90. Completion of things commenced**

Anything commenced by the Perth Theatre Trust before commencement day may be continued on and after commencement day by the Arts and Culture Trust so far as the doing of the thing is within the Arts and Culture Trust's functions.

#### **91. Continuing effect of things done**

(1) In this section —

*relevant act* means an act, matter or thing done or omitted to be done before commencement day by, to or in respect of the Perth Theatre Trust.

(2) To the extent that a relevant act has force or significance on or after commencement day it is taken, on and after commencement day, to have been done or omitted by, to or in respect of the Arts and Culture Trust so far as the act, matter or thing is relevant to the Arts and Culture Trust's functions.

(3) This section does not affect the operation of any other provision of this Part.

#### **92. Contracts, agreements, arrangements and other instruments**

(1) In this section —

*relevant agreement* means any of the following subsisting immediately before commencement day —

- (a) a contract, agreement or other instrument to which the Perth Theatre Trust is a party or which contains a reference to the Perth Theatre Trust;
- (b) an arrangement with the Council of the City of Perth entered into by the Perth Theatre Trust under section 19(1) of the repealed Act.

- (2) A relevant agreement has effect on and after commencement day as if —
- (a) the Arts and Culture Trust were substituted for the Perth Theatre Trust as a party to the relevant agreement; and
  - (b) any reference in the relevant agreement to the Perth Theatre Trust were, unless the context otherwise requires, amended to be or include a reference to the Arts and Culture Trust.

**93. Business arrangements**

- (1) Subsection (2) applies if immediately before commencement day —
- (a) the Perth Theatre Trust was exercising its powers under section 16(2)(da) of the repealed Act in relation to a business arrangement; and
  - (b) the terms and conditions of the business arrangement were approved under section 16(3) of the repealed Act.
- (2) On and after commencement day, the Arts and Culture Trust may exercise its powers under section 11(3)(f) of this Act in relation to the business arrangement as if the terms and conditions of the business arrangement were approved under section 13(1) of this Act.
- (3) Subsection (4) applies if immediately before commencement day —
- (a) the Perth Theatre Trust was exercising its powers under section 16(2)(da) of the repealed Act in relation to a business arrangement; and
  - (b) the business arrangement was exempted, by notice under section 16(4) of the repealed Act, from the operation of section 16(3) of the repealed Act.
- (4) On and after commencement day, the Arts and Culture Trust may exercise its powers under section 11(3)(f) of this Act in relation to the business arrangement as if the business

arrangement were exempted, by notice under section 13(2) of this Act, from the operation of section 13(1) of this Act on the same conditions (if any) specified in the notice under section 16(4) of the repealed Act.

**94. Declarations of theatres under s. 3(2) of repealed Act**

- (1) This section applies if —
  - (a) a building or structure has been declared under section 3(2) of the repealed Act to be a theatre for the purposes of that Act; and
  - (b) the declaration is in force immediately before commencement day.
- (2) On and after commencement day, the declaration continues in force, with any necessary modifications, as if it were a declaration under section 4(1) of this Act that the building or structure is a venue used, or intended to be used, wholly or partly for cultural or artistic purposes.

**Division 6 — Other transitional provisions**

**95. Transitional regulations**

- (1) In this section —

*publication day*, for transitional regulations, means the day on which the transitional regulations are published in the *Gazette*;

*specified*, in relation to transitional regulations, means specified or described in the transitional regulations;

*transitional matter* —

  - (a) means a matter of a transitional nature that arises as a result of —
    - (i) the repeals effected by section 73; or
    - (ii) an amendment made under Part 6; or

(iii) the enactment of this Act;

and

(b) includes a saving or application matter;

*transitional regulations* means regulations referred to in subsection (2).

- (2) If there is not sufficient provision in this Act for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.
- (3) Transitional regulations may provide that specified provisions of a written law —
- (a) do not apply to or in relation to a specified matter; or
  - (b) apply with specified modifications to or in relation to any matter.
- (4) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than the day on which this section comes into operation, the transitional regulations have effect according to their terms.
- (5) If transitional regulations contain a provision referred to in subsection (4), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State) the rights of that person existing before publication day; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before publication day.

## **96. Savings**

The operation of this Part must not be regarded as —

- (a) a breach of contract or confidence or otherwise as a civil wrong; or

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- (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
  - (c) giving rise to any right to damages or compensation; or
  - (d) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
  - (e) causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) releasing or allowing the release of any surety.
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## Notes

This is a compilation of the *Arts and Culture Trust Act 2021*. For provisions that have come into operation see the compilation table.

### Compilation table

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Arts and Culture Trust Act 2021</i>	15 of 2021	9 Sep 2021	Pt. 1 (other than s. 4 and 5): 9 Sep 2021 (see s. 2(a)); Act other than s. 1, 2, 3 and 6: 1 Jul 2022 (see s. 2(b) and SL 2022/77 cl. 2)

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
acquire.....	11(1)
activity .....	3
Arts and Culture Trust .....	79
Arts and Culture Trust Account .....	3
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Board.....	3
Board member.....	3, 17(1)
business arrangement .....	11(1)
CEO .....	3, 41(1)
chairperson.....	3
commencement day .....	79
committee .....	3
Department CEO.....	3
deputy chairperson .....	3
dispose of .....	11(1)
document.....	57(1)
former account .....	83(1)
information.....	57(1)
LA Act .....	3
liability .....	79
misconduct .....	3
participate .....	11(1)
Perth Theatre Trust .....	79
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promote .....	10(1)
publication day.....	95(1)
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relevant agreement.....	92(1)
relevant official .....	86(1)
relevant person .....	32(1)
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right.....	79
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staff member .....	3
State tax .....	87(1)



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Trust.....	3
Trust property .....	3
Trust venue .....	3
Trust venue programming.....	3
unable to act.....	3
venue.....	3
work .....	11(1)