

# PERTH THEATRE TRUST.

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No. 79 of 1979.

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AN ACT to establish and constitute the Perth Theatre Trust, to provide for the management and operation of theatres vested in or leased to it or under its control and for matters incidental thereto or connected therewith.

[Assented to 6th December, 1979.]

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:—

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Perth Theatre Trust Act, 1979.* Short title.
2. This Act shall come into operation on a date Commence- to be fixed by proclamation. ment.

Interpre-  
tation.

3. (1) In this Act, unless the context otherwise indicates—

“chairman” means trustee appointed to be chairman of the Trust under subsection (2) of section 5;

“committee” means committee appointed under subsection (1) of section 11;

“Council trustee” means trustee appointed on the nomination of the Council;

“financial year” means year ending on the thirtieth day of June;

“manager” means person appointed to be the manager of the Trust under subsection (1) of section 17;

“Ministerial trustee” means trustee appointed on the nomination of the Minister;

“paragraph” means paragraph of the section or subsection in which the term appears;

“section” means section of this Act;

“subsection” means subsection of the section in which the term appears;

“the Council” means the Council of the City of Perth;

“theatre” includes concert hall and opera house and such other building or structure as may be declared under subsection (2) to be a theatre for the purposes of this Act;

“Trust” means Perth Theatre Trust established by subsection (1) of section 4;

“trustee” means trustee appointed under section 5.

(2) The Minister may from time to time declare by notice published in the *Government Gazette* any building or structure constructed or adapted or to be constructed or adapted and used or to be used for the public presentation of one or more of the performing arts to be a theatre for the purposes of this Act.

PART II.—ESTABLISHMENT, COMPOSITION AND  
PROCEEDINGS OF TRUST.

4. (1) There is hereby established a body corporate under the name of the Perth Theatre Trust. Establishment of Trust.

(2) Under its corporate name, the Trust—

- (a) has perpetual succession and a common seal;
- (b) may sue and be sued in any court;
- (c) has the powers, functions, authorities and duties conferred or imposed by or under this Act; and
- (d) subject to this Act, is capable of doing and suffering all that bodies corporate may do and suffer.

5. (1) The Trust shall consist of seven trustees appointed by the Governor of whom— Composition of Trust.

- (a) four shall be persons nominated by the Minister; and
- (b) three shall be persons nominated by the Council from amongst the members or officers of the Council.

(2) The Governor shall appoint one of the trustees to be chairman of the Trust.

(3) If the Minister has given the Council notice in writing requiring the Council within the period specified in that notice, being a period of not less than six weeks from the date of giving of that notice, to nominate one or more persons from amongst the members or officers of the Council for appointment as a trustee or trustees under subsection (1) and the Council fails to nominate that person or those persons within that specified period, the Governor may, on the recommendation of the Minister, appoint a person or persons as a trustee or

trustees in place of the person or persons in respect of whom the failure to nominate occurred and the person or persons so appointed shall be deemed for all purposes to have been nominated by the Council under paragraph (b) of that subsection.

(4) Subject to this Act, a trustee shall hold office for such period not exceeding three years as is specified in the instrument of his appointment.

(5) When a trustee ceases for any reason to hold office before the expiry of the period of office specified in the instrument of his appointment, the Governor shall—

(a) if the former trustee to be replaced was a Ministerial trustee, appoint in his stead a trustee on the nomination of the Minister; or

(b) if the former trustee to be replaced was a Council trustee, appoint in his stead a trustee on the nomination of the Council from amongst the members or officers of the Council,

to hold office, subject to this Act, for the unexpired portion of the period of office of that former trustee.

(6) The provisions of subsection (3) apply, with necessary modifications, to the appointment under subsection (5) of a trustee to replace a former trustee who was a Council trustee.

(7) A trustee is, on the expiry of his period of office, eligible for renomination and reappointment.

Casual  
vacancies.

6. (1) A trustee shall cease to hold office and his office shall become vacant if—

(a) he dies;

(b) he resigns his office by writing under his hand addressed to the Minister;

(c) he is removed from office under section 7;

- (d) he is absent without leave of the Minister from three consecutive meetings of the Trust of which he has had notice;
- (e) he is an incapable person within the meaning of section 5 of the Mental Health Act, 1962;
- (f) he becomes bankrupt, takes advantage of protection or relief under the laws relating to bankruptcy or has his affairs under liquidation by arrangement with his creditors; or
- (g) he is convicted of an indictable offence or of any other offence which, in the opinion of the Minister notified to him in writing, is of so serious a nature as to render him unsuitable to remain in office as a trustee.

(2) A Council trustee shall cease to hold office and his office shall become vacant if he ceases to be a member or officer, as the case may be, of the Council.

7. The Governor may, by notice in writing served on a trustee, remove the trustee from office for inability, inefficiency or misbehaviour.

Removal of trustee from office.

8. (1) A person shall not affix the common seal of the Trust to any document except in pursuance of a resolution of the Trust.

Common seal, meetings and quorum.

(2) Any document executed in pursuance of a resolution of the Trust shall be attested by the signature of any two trustees.

(3) When a document purporting to bear the common seal of the Trust is produced before any court, judge or person acting judicially, that court, judge or person shall, unless the contrary is proved, presume that—

- (a) that document bears the common seal of the Trust; and
- (b) the common seal of the Trust was duly affixed to that document.

(4) The procedure for the convening of meetings of the Trust and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Trust.

(5) Any four trustees shall constitute a quorum at any meeting of the Trust.

(6) Any duly convened meeting of the Trust, at which meeting a quorum is present, is competent—

(a) to transact any business of the Trust; and

(b) to exercise or perform all the powers, functions, authorities and duties conferred or imposed on the Trust by or under this Act.

(7) Any question arising at a meeting of the Trust shall be determined by a majority of the votes of the trustees present and voting and, when the votes cast on any such question are equally divided, that question shall remain unresolved until a subsequent meeting of the Trust.

(8) The Trust shall cause accurate minutes to be kept of the proceedings at its meetings.

Remuneration and expenses of trustees.

9. (1) A trustee shall be entitled to such remuneration and to such travelling and other allowances as are determined in his case by the Minister on the recommendation of the Public Service Board.

(2) Acceptance of or acting in the office of trustee shall not of itself render the provisions of the Public Service Act, 1978, or any other Act applying to persons as officers of the Public Service applicable to that trustee or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

Delegation of powers.

10. (1) The Trust may, with the consent in writing of the Minister and subject to subsection (1) of section 11, by resolution delegate to any trustee,

any committee, the manager, any officer or servant of the Trust or any other person any of its powers, functions, authorities and duties under this Act, except this power of delegation, but such a delegation does not prevent the exercise or performance by the Trust of any of those powers, functions, authorities or duties.

(2) The Trust may by resolution revoke a delegation made under subsection (1).

11. (1) The Trust may appoint committees to investigate and advise the Trust on any aspect of its functions or to implement any decision of the Trust, but the delegation by the Trust to a committee of any of the powers, functions, authorities and duties of the Trust under this Act does not relieve the Trust of the responsibility for the decisions of the committee. Committees.

(2) A committee may consist of such persons as the Trust determines, whether trustees or persons who are not trustees, but so that in every case the chairman of the committee shall be a trustee.

(3) The provisions of this Act, except insofar as the Minister may otherwise direct or approve, apply, subject to such modifications as may be necessary, to a committee and to a person appointed to serve on a committee as they apply to the Trust or to a trustee.

(4) A committee shall report to the Trust on its activities at such times as the Trust directs.

12. (1) The chairman shall preside at all meetings of the Trust at which he is present. Chairman  
and  
presiding  
trustee.

(2) In the absence of the chairman from any meeting of the Trust, the trustees present thereat shall, from amongst their own number, elect a

trustee to preside at that meeting and at that meeting the trustee so elected shall have and may exercise the powers and functions conferred on the chairman by this section.

Validity of  
acts, pro-  
ceedings or  
determina-  
tions of  
Trust.

13. An act, proceeding or determination of the Trust shall not be invalid by reason only of any vacancy in the office of any trustee or of any defect in the appointment of any trustee.

Trustee to  
declare  
interest.

14. (1) Subject to subsection (5), a trustee who has an interest in a matter which is to be considered or discussed or voted upon at a meeting of the Trust shall disclose the fact that he has that interest—

- (a) by notice in writing given to the manager prior to that meeting; or
- (b) at that meeting as soon as is practicable after the commencement thereof.

(2) A trustee who is required by subsection (1) to disclose the fact that he has an interest in a matter shall not act as a trustee in relation to the matter.

(3) When a trustee discloses under subsection (1) the fact that he has an interest, the manager shall record in a book to be kept for the purpose particulars of that disclosure.

(4) A person who contravenes the provisions of subsection (1) or (2) commits an offence unless he did not know, and proves that he did not know—

- (a) that a matter in which, at the material time, he had an interest was the subject for consideration, discussion or voting; or
- (b) at the material time, that he had the interest concerned.

Penalty—Five hundred dollars.

(5) For the purposes of this section—

- (a) a person shall be regarded as having an interest in a matter if he has a direct or indirect pecuniary interest in that matter;

- (b) a general notice in writing given by a trustee to all the other trustees to the effect that he is a member of a specified corporation or firm and is to be regarded as interested in any contract which may, after the date of that notice, be made by the Trust with that corporation or firm is a sufficient disclosure for the purposes of this section of the interest of the trustee by whom it is given in any contract made after that date by the Trust with that corporation or firm.

PART III.—POWERS, FUNCTIONS, AUTHORITIES  
AND DUTIES OF TRUST.

15. In the exercise and performance of its powers, functions, authorities and duties the Trust shall, except when the Trust makes or gives or is required to make or give a recommendation or advice to the Minister, be subject to the general direction and control of the Minister.

Trust  
subject to  
general  
direction  
and control  
of Minister

16. (1) Subject to this Act, the functions of the Trust are—

Functions  
and powers  
of Trust.

- (a) encouraging, fostering and promoting the use of all theatres vested in or leased to the Trust or over which it has control (in this subsection called "Trust theatres");
- (b) without limiting the generality of paragraph (a), the care, control, management, maintenance, operation and improvement of Trust theatres and the doing of all things necessary for and incidental and ancillary to that care, control, management, maintenance, operation and improvement;
- (c) advising the Minister on the making of contracts for the management of Trust theatres;
- (d) recommending to the Minister policies for the letting and operation of Trust theatres and of the facilities and spaces related thereto;

- (e) advising the Minister on the terms and conditions under which the theatres, facilities and spaces referred to in paragraph (d) are to be let to users thereof;
- (f) holding all real and personal property vested in it; and
- (g) co-ordinating all activities taking place in each of the Trust theatres.

(2) The Trust may in the performance of the functions referred to in subsection (1)—

- (a) subject to this Act, acquire, hold and dispose of any real or personal property and, with the approval of the Minister, sell, alienate, mortgage, charge or demise any real or personal property so held;
- (b) without limiting the generality of paragraph (a) and with the approval of the Minister, lease any theatre to or from any person;
- (c) with the approval of the Minister, enter into a contract with any person to manage any theatre vested in or leased to the Trust or over which it has control;
- (d) do anything—
  - (i) which is required or authorised by or under this Act to be done by the Trust; or
  - (ii) which is necessary or convenient to be done by the Trust for the purpose of exercising or performing its powers, functions, authorities or duties under this Act.

Employment  
of manager  
and other  
officers or  
servants.

17. (1) For the purposes of this Act, the Trust may, with the approval of the Minister on the recommendation of the Public Service Board, appoint—

- (a) a person to be the manager of the Trust; and

- (b) such persons to be officers or servants of the Trust, in addition to the manager of the Trust, as the Trust thinks necessary for the efficient performance of the functions of the Trust.

(2) The manager is the chief executive officer of the Trust and shall have and may exercise or perform such powers, functions, authorities or duties as are conferred or imposed on him by or under this Act or as are directed by the Trust to be exercised or performed by him.

(3) The terms and conditions of service of the manager and of the officers or servants of the Trust shall be as determined by the Public Service Board, subject, in the case of those officers or servants, to any relevant award or industrial agreement under the Industrial Arbitration Act, 1912, or to any relevant award or agreement under the Public Service Arbitration Act, 1966.

(4) When the manager or an officer or servant of the Trust, immediately prior to his appointment as such, occupied an office under the Public Service Act, 1978, he shall—

- (a) if he resigns his office or employment or if his term of office or employment expires by effluxion of time, other than by his attaining the age of sixty-five years, and he is not reappointed, be entitled to be appointed to an office under that Act not lower in status than the office which he occupied immediately prior to his appointment as the manager or an officer or servant of the Trust; and
- (b) continue to retain his existing and accruing rights, including his rights under the Superannuation and Family Benefits Act, 1938, as if his service as the manager or as an officer or servant of the Trust were service as an officer under the Public Service Act, 1978.

(5) In relation to the manager or to an officer or servant of the Trust to whom subsection (4) does not apply—

- (a) the Trust is deemed to be a department; and
- (b) the manager or that officer or servant is deemed to be an employee,

within the meaning and for the purposes of the Superannuation and Family Benefits Act, 1938, but he is not compelled to become a contributor for pension, superannuation or benefits under that Act.

Trust may use services of public servants.

18. The Trust may—

- (a) with the approval of the Minister and the consent of the Minister controlling the department of the Public Service concerned (in this section called “the department”); and
- (b) on such terms as may be mutually arranged with the department,

make use of the services of any of the officers or employees of the department.

Arrangement with Council for leasing and management of theatre.

19. (1) Notwithstanding anything in this Act, the Trust may enter into an arrangement with the Council upon such terms and conditions as are approved by the Minister—

- (a) to lease from the Council any theatre vested in or leased to the Council; and
- (b) to care for, control, manage, maintain, operate and improve a theatre referred to in paragraph (a),

for such period as is specified in that arrangement.

(2) An arrangement entered into under subsection (1) may provide for the employment by the Trust of all or any of the staff employed by the Council in the management and operation of the theatre concerned and otherwise in connexion therewith,

for the terms and conditions of service of that staff when employed by the Trust, for future capital expenditure on or in connexion with that theatre, for the contribution by the Council of funds to be used for or in connexion with the operations or activities of the Trust, for the supply by the Council of information necessary or desirable for the care, control, management, maintenance, operation and improvement of that theatre and for any other matter necessary or desirable for the effective implementation of that arrangement.

(3) The Trust may exercise or perform such powers, functions, authorities and duties as may be necessary or convenient for implementing an arrangement entered into under subsection (1).

#### PART IV.—FINANCIAL PROVISIONS.

20. (1) A rate or tax shall not be made, charged or levied by or under any law of the State on or in respect of any real property leased to or vested in the Trust, unless that property is leased to, or occupied by, some other person for a purpose which is not directly related to the performance by the Trust of any of its functions under this Act.

Certain  
property of  
Trust  
exempt  
from rates,  
taxes and  
stamp duty.

(2) An instrument executed after the coming into operation of this Act by which any real or personal property is assured to or vested in the Trust for the purposes of this Act or agreed to be so assured or vested is exempt from any stamp duty chargeable under the Stamp Act, 1921.

21. (1) The Trust shall keep full and correct accounts of all money received and expended by it.

Accounts.

(2) The Auditor General shall audit accounts kept under subsection (1) and for that purpose has and may exercise all such powers as he has under the Audit Act, 1904, in respect of public moneys.

(3) The Trust shall, as soon as practicable after the end of each financial year, cause the accounts kept under subsection (1) to be balanced and a full and true statement of accounts of all the moneys received and expended by the Trust during that year, and of the assets and liabilities of the Trust at the end of that year, to be prepared and submitted to the Auditor General.

Financial  
report.

22. (1) The Trust shall, not later than the thirtieth day of September in each year, furnish to the Minister a report of its activities during the preceding financial year, together with a copy of its accounts for that year certified by the Auditor General.

(2) The Minister shall lay the report and the copy of the accounts furnished to him under subsection (1) before each House of Parliament within fifteen sitting days of that House after the receipt of that report and the copy of those accounts by the Minister.

Funds of  
Trust.

23. (1) The funds of the Trust comprise—

- (a) all moneys received by the Trust out of moneys appropriated by Parliament for the purposes of this Act;
- (b) all moneys which may be contributed to the Trust or which may otherwise be lawfully payable to the Trust;
- (c) all moneys received by the Trust by way of fees, rent and otherwise in respect of any land vested in, leased to or under the control of the Trust;
- (d) all moneys received by the Trust by way of charges and fees made under this Act;
- (e) all moneys received by the Trust by way of gift or from the sale or other disposal of any property, real or personal, of the Trust;
- (f) all moneys received by the Trust under an arrangement entered into under section 19; and

- (g) the proceeds of investment of any moneys standing to the credit of the Account.

(2) The funds referred to in subsection (1) shall be paid into and placed to the credit of an account at the Treasury to be called the Perth Theatre Trust Account.

(3) All expenditure incurred by the Trust for the purposes of this Act shall be paid from the Account.

(4) Subject to the terms of any trust or endowment, the Trust may—

- (a) invest any moneys standing to the credit of the Account and not immediately required for expenditure by the Trust in any manner in which trustees are for the time being authorised by law to invest trust funds; and
- (b) from time to time sell or vary any investments made under this subsection.

(5) The Trust may retain and hold any investments which may be transferred to the Trust otherwise than by way of purchase, notwithstanding that those investments may not be of the nature authorised by subsection (4).

(6) In subsections (1), (3) and (4)—

“Account” means Perth Theatre Trust Account referred to in subsection (2).

24. The Trust may accept any gifts, whether by will or *inter vivos*, of any real or personal property and whether in possession, reversion or remainder, or disclaim the benefit of any such gifts.

Power of  
Trust to  
accept gifts.

25. (1) As soon as practicable after the date on which this Act comes into operation, the Trust shall present to the Minister a budget showing its estimates of revenue and expenditure over the balance of the financial year within which the budget is presented and thereafter the Trust shall before the commencement of each succeeding

Budget.

financial year present to the Minister a budget showing its estimates of its revenue and expenditure for that succeeding financial year.

(2) The Minister may—

- (a) approve of any budget presented to him under subsection (1); or
- (b) direct or allow the Trust to amend a budget before approving thereof under this subsection.

(3) The Trust shall not, without the consent of the Minister, incur any expenditure which is not authorised by a budget approved under subsection (2).

#### PART V.—MISCELLANEOUS.

Regulations.

26. (1) The Governor may, on the recommendation of the Trust, make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made under that subsection may provide for all or any of the matters set out in the Schedule to this Act.

#### SCHEDULE.

(Section 26.)

##### MATTERS IN RESPECT OF WHICH THE GOVERNOR MAY MAKE REGULATIONS.

1. The form of the common seal of the Trust and the manner in which it shall be kept and used.
2. The care, control, management, maintenance and improvement of buildings and land controlled by, leased to or vested in the Trust (in this Schedule called "Trust buildings and land").
3. The securing of decency and order among persons within or on Trust buildings and land.

4. The admission to, and the exclusion or expulsion from, Trust buildings and land of persons.
  5. The regulation or prohibition of the taking of intoxicating liquor into or onto, and the consumption thereof in or on, Trust buildings and land.
  6. The regulation or prohibition of the taking of animals into or onto Trust buildings and land or permitting or suffering animals to be therein or thereon.
  7. The regulation or prohibition of the parking of vehicles in or on Trust buildings and land, the making of charges therefor and the collection and receipt of those charges by the Trust or other persons.
  8. The making of charges or entrance fees for persons, clubs or associations using or entering on Trust buildings and land or any specified parts thereof and the collection and receipt of those charges and fees by the Trust or by other persons.
  9. The regulation of the affairs, business and management of the Trust.
  10. The disposal by the Trust of any unclaimed property left in or on any Trust buildings and land.
  11. The imposition of penalties not exceeding one hundred dollars for offences against regulations made under section 26.
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