

WESTERN AUSTRALIAN ARTS COUNCIL.

No. 42 of 1973.

AN ACT to make provision for the encouragement, fostering, and promotion of the practice and appreciation of the arts in Western Australia, to establish the Western Australian Arts Council, and for purposes incidental thereto.

[Assented to 18th October, 1973.]

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

1. This Act may be cited as the *Western Australian Arts Council Act, 1973.* Short title.
2. This Act shall come into operation on a day commencement. to be fixed by proclamation.

Interpreta-
tion.

3. In this Act—

“Council” means the Western Australian Arts Council established by section 5;

“member” means a member of the Council, and includes a deputy acting in the place of a member;

“the Account” means the Western Australian Arts Council Account established under section 27;

“Treasurer” means Treasurer of the State.

W.A. Arts
Advisory
Board.

4. (1) On the coming into operation of this Act a reference to the Western Australian Arts Advisory Board in any other Act or in any contract, agreement or other instrument to which that body was a party shall be read and construed as a reference to the Council.

(2) Any determination, grant, allocation, decision or other action taken by the Western Australian Arts Advisory Board prior to the coming into operation of this Act which would have been lawful under this Act—

(a) if this Act had been in force at the time; and

(b) if the action had been taken by the Council under this Act,

is hereby validated and shall be deemed to have been an action taken by the Council under and in accordance with this Act.

Establish-
ment of the
Council.

5. (1) There shall be established a Council to be known as the Western Australian Arts Council which, subject to the Minister, shall be responsible for the administration of this Act.

(2) The Council—

(a) shall be a body corporate with perpetual succession and an official seal;

- (b) may, in its corporate name, acquire, hold and dispose of real and personal property; and
- (c) shall be capable of suing and being sued in its corporate name.

(3) The Council may, with the approval of the Minister, borrow moneys on such terms and conditions as the Treasurer approves.

(4) The powers of the Council in relation to real or leasehold property shall not be exercised except with the consent of the Minister and subject to such conditions as he may, in giving his consent, impose.

(5) The Council, when established, does not represent, and is not an agent or servant of, the Crown.

6. (1) The Council shall consist of—

Constitution
of the
Council.

- (a) a Chairman;
- (b) a Deputy Chairman; and
- (c) not more than ten nor less than seven other members,

appointed by the Governor on the recommendation of the Minister.

(2) Subject to this Act, each member may be appointed for a term not exceeding three years that is specified at the time of his appointment.

(3) Subject to this Act, where the term of office of any member expires by effluxion of time, the member is eligible for re-appointment.

(4) Each member may, at any time, be removed from office by the Governor for disability, insolvency, neglect of duty or misconduct.

(5) A member may, at any time, resign his office by writing addressed to the Minister.

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(6) If a member ceases to hold office before the expiration of the period of his appointment another person may be appointed by the Governor in the place of that member for the remainder of that period.

(7) The Minister may grant leave of absence to a member upon such terms and conditions as he determines.

(8) The powers of the Council are not affected by any vacancy in the membership thereof, and if a quorum is present, all acts and proceedings of the Council are valid and effectual notwithstanding the vacancy.

(9) All acts and proceedings of the Council are, notwithstanding any defect in the appointment of any member, or that any member was disqualified or not entitled to act, as valid as if the member had been duly appointed and was qualified to act and had acted as member and as if the Council had been duly and fully constituted.

Deputies.

7. (1) The Governor may, in respect of each member, appoint a person to be the deputy of the member.

(2) The deputy of a member has, at any meeting of the Council at which he but not the member is present, all the powers and functions of that member.

**Proceedings
of the
Council.**

8. (1) Subject to this Act, the business of the Council shall be conducted in such manner as the Council determines.

(2) The first meeting of the Council shall be convened by the Chairman and thereafter, subject to subsection (3) of this section, meetings shall be held at the times and places determined by the Council, but the Chairman, or any three members, may, on reasonable notice to all members, call a meeting at any time.

(3) The Chairman shall ensure that a meeting of the Council is conducted on at least four occasions in each financial year.

(4) At any meeting of the Council five members constitute a quorum.

(5) The Chairman shall preside at all meetings of the Council at which he is present, and the Deputy Chairman shall preside at any meeting at which he, but not the Chairman is present, but if neither the Chairman nor the Deputy Chairman is present at a meeting, the members present shall select one of their number to act as Chairman at the meeting.

(6) Questions arising at a meeting of the Council shall be decided, in open voting, by a majority of the members present, but where the voting on any question is equally divided the person presiding at the meeting shall have a casting vote as well as his deliberative vote.

(7) A resolution signed or assented to by letter or telegram by a majority of the members shall have the same effect as a resolution duly passed at a meeting of the Council.

(8) The Council shall keep a record of its proceedings.

(9) In all cases of dispute, doubt or difficulty, respecting or arising out of matters of procedure or order, then, subject to the Minister, the decision of the member presiding shall be final and conclusive.

9. (1) A person who is appointed to the office of Chairman of the Council or Deputy Chairman of the Council may resign that office by writing addressed to the Minister, but where a person so resigns from the office of Chairman or Deputy Chairman he may continue to hold office as a member of the Council for the residue of the period for which he was appointed as a member.

Resignation
of Chairman
or Deputy
Chairman.

(2) A person who ceases to hold office as a member is not capable of holding office as Chairman or Deputy Chairman.

(3) A vacancy in the office of Chairman or Deputy Chairman shall be filled by the appointment of a person to that office by the Governor on the recommendation of the Minister.

(4) Subject to subsection (1) of this section, a person appointed to the office of Chairman or Deputy Chairman shall hold that office for so long as he continues to be a member, and where the term of his office as a member expires by effluxion of time he is, on being re-appointed as a member, eligible for re-appointment as Chairman or Deputy Chairman.

Remuneration and allowances of members.

10. (1) Subject to subsection (2) of this section members shall be paid such remuneration and allowances as the Governor determines.

(2) No determination shall be made under subsection (1) of this section in respect of the remuneration and allowances to be paid to a person to whom the Public Service Act, 1904, applies except with the prior approval in writing of the Chairman of the Public Service Board.

Functions of the Council.

11. (1) It shall be the general duty of the Council to encourage, foster, and promote the practice and appreciation of the arts in Western Australia.

(2) Any question as to what constitutes art, or what is artistic or cultural, or to what extent any activity should be encouraged, is a matter that may be determined by the Council for the purposes of this Act.

(3) It shall be the function of the Council—

- (a) to take measures to enhance the standards of performance and execution in all aspects of the arts;

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- (b) to make accessible to the public of Western Australia all forms of artistic or cultural work or activity;
- (c) to foster and maintain public interest in the arts and culture in the State; and
- (d) to exercise such powers and to perform such duties as may be conferred upon the Council by this Act or any other statute.

12. (1) The Council has all such powers, rights and authority as are necessary or expedient to enable it to carry out its functions in accordance with this Act.

Powers of
the Council.

(2) Without derogating from the generality of subsection (1) of this section, the Council may—

- (a) formulate and implement policies for the furtherance of and assistance to the arts generally;
- (b) make grants, pay subsidies or furnish advances
 - (i) to any person to assist him to undertake studies, assignments or commissions, make investigations, or gain further experience in respect of matters approved by the Council whether in the State or elsewhere;
 - (ii) to local authorities, organisations or persons engaged in the execution, performance, creation, publication or presentation of any of the arts or in the preservation and display of articles and things relating to the arts;
- (c) advise and assist, and enter into agreements with, any person or body managing or maintaining any land, building, exhibition or thing for artistic or cultural purposes or conducting or promoting any artistic or cultural activity;

- (d) make awards to persons in Western Australia for outstanding accomplishments in the arts, commission the creation, execution or performance of any artistic work, and arrange for or undertake the exhibition of any artistic work or the giving of any artistic or cultural performance in the State or elsewhere;
- (e) acquire and accept whether by purchase, gift, loan or otherwise, and whether temporarily or permanently, any artistic work;
- (f) deliver any artistic work, article or thing into the custody or control of any local authority, museum, gallery, library, association, society or body of persons, whether incorporated or not, for the purpose of making it accessible to the public or for the purpose of study;
- (g) collect, examine, disseminate or publish any information relating to the arts or to any particular aspect of the arts;
- (h) levy dues, make charges and impose fees in relation to activities promoted, arranged or controlled by the Council; and
- (i) subject to the provisions of this Act, generally do whatever it considers necessary or expedient in order to stimulate artistic or cultural activity, or to make it accessible to the public, so that the purposes for which the Council exists may be accomplished.

Loans and endowments. 13. In the exercise of its functions under this Act the Council may—

- (a) make loans with or without security and either free of interest or at such rates of interest as the Council determines;

- (b) with the approval of the Minister, establish any endowment or create any trust upon such terms and conditions and having such objects not inconsistent with this Act as the Council thinks fit, and appoint trustees in relation thereto.

14. The Council—

*Donations to
the Council.*

- (a) may accept any donation, or the care and control of any property, offered by way of gift or loan by the government, or any department or instrumentality of the Commonwealth or a State, or by any local authority, public body or corporation, any company or other incorporated body, any unincorporated body of persons, or any other person, unless expressly prohibited by any Act or instrument of trust;
- (b) may act as trustee or manager of any property, legacy, endowment, bequest, gift or trust moneys for the purposes of the Council or in furtherance of the work of the Council; and
- (c) may use and apply any moneys or property not immediately required for the purposes of a trust declared in relation thereto in any manner not at variance with the trust.

15. No duty shall be payable—

*Exemptions
from
payment
of duty.*

- (a) under the Stamp Act, 1921, in respect of any agreement, conveyance or transfer, or lease, deed of gift or deed of settlement entered into for the purposes of this Act and in relation to which the Council would otherwise be liable to pay the duty; or
- (b) under the Death Duties (Taxing) Act, 1934, in respect of any property comprised in a gift made to the Council, without regard to the date of death of the donor.

16. The Council may, with the approval of the Minister, make rules not inconsistent with this Act for and with respect to all or any of the following purposes, namely—

- (a) regulating the proceedings of the Council and of any committee of the Council and the conduct of meetings;
- (b) providing for the custody and use of the official seal of the Council;
- (c) providing for the custody and use of the property of the Council, or of any property placed for the time being in the care or control of the Council; and
- (d) providing for such matters as are deemed necessary or expedient for the effective administration of this Act, and for the carrying out of the work of the Council.

17. (1) The Council shall confer and collaborate with departments of the Commonwealth and the States of the Commonwealth and other bodies or instrumentalities of the Commonwealth or States of the Commonwealth having to do with matters relevant to the purposes of this Act.

(2) The Council has power, subject to the approval of the Minister and on such terms and conditions as the Minister may determine, to invite any person to act in an advisory capacity to the Council in relation to any or all aspects of the functions of the Council.

(3) The Minister may, on the request of the Council, enter into arrangements with—

- (a) a Minister of the Crown of any State of the Commonwealth, a Minister of State of the Commonwealth, a department or an instrumentality of the Commonwealth or any State of the Commonwealth; or
- (b) a university or other tertiary educational institution; or

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(c) any other organisation or person,
with respect to any investigation, research, or activity that may be necessary or desirable for the purposes of this Act.

18. (1) The Council may set up committees to investigate and advise the Council on any aspect of its functions or to implement any decision of the Council, but the delegation by the Council to a committee of any power or duty of the Council does not relieve the Council of the responsibility for the decision of that committee. Committees.

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

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

19. (1) The Council may, with the consent in writing of the Minister, in relation to any matter or class of matters, or in relation to any activity or function of the Council, by resolution, delegate any of the powers or duties conferred or imposed upon it by this Act, except this power of delegation, to any person or organisation. Delegation by Council.

(2) The Council may, by resolution, revoke a delegation given under this section and a delegation so given does not prevent the exercise or discharge by the Council of any of its powers or duties.

20. (1) A person shall be appointed to be the chief executive officer of the Council. Chief Executive Officer.

(2) Until a date to be fixed by the Minister the chief executive officer of the Council shall be appointed by the Governor on the recommendation of the Minister, and thereafter that officer shall be appointed by the Council, subject to the approval of the Minister.

(3) The chief executive officer of the Council—

- (a) shall have such powers and duties as are conferred upon him by resolution of the Council and, unless otherwise expressly provided, may delegate any of those powers or duties, except this power of delegation, to any person or body;
- (b) shall be entitled to attend all meetings of the Council and may speak in relation to any matter; but
- (c) shall not be entitled to vote at any meeting.

Officers and employees.

21. (1) Subject to this Act and the approval of the Minister the Council may appoint such officers and employees as the Council thinks fit for the purposes of this Act.

(2) Subject to any relevant award or industrial agreement under the Industrial Arbitration Act, 1912, and subject to subsection (3) of this section, the terms and conditions of appointment and employment of officers and employees of the Council, including the salary payable, shall be such terms and conditions as the Minister, after consultation with the Council, determines.

(3) Where the Minister, after consultation with the Public Service Board, considers that a person appointed under this section is in like employment with the Council to any employment in the Public Service of the State, that person shall have like terms and conditions of employment with the Council to those of employment in the Public Service of the State.

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(4) Where a person so appointed was, immediately before being so appointed, an officer in the service of a department of the Public Service of the State or of the Education Department—

- (a) he retains his existing and any rights that may have accrued to him under the Act pursuant to which he was then serving, and, subject to section 22 of this Act, in particular his rights if any under the Superannuation and Family Benefits Act, 1938; and
- (b) for the purpose of determining those rights his service as such an officer shall be taken into account as if it were service with the Council.

(5) A person appointed under the provisions of this section is not a person appointed under the Public Service Act, 1904, and the provisions of the Government Employees (Promotions Appeal Board) Act, 1945, do not apply to or in relation to an officer or employee of the Council.

22. (1) The Council may request the Minister to whom the administration of the Superannuation and Family Benefits Act, 1938, is committed to recommend that the Council be included as a corporate body in the term "department" for the purposes of that Act, and the Treasurer may, on such recommendation and upon the Council complying with the requirements of that Act, approve of the Council as, and the Council shall thereupon be deemed to be, a department for the purposes of that Act.

Superannua-tion.

(2) A member of the staff or other employee of the Council is not obliged to become a contributor under the Superannuation and Family Benefits Act, 1938.

23. (1) The Council may, with the consent of the Minister administering—

Co-opted and seconded staff.

- (a) any department of the Public Service of the State; or

(b) the Education Department,

for the purposes of this Act co-opt the services, whether of an administrative, technical, teaching staff, or other nature, of any person employed in any of those departments, or request the secondment of any such person, upon such terms as may be agreed between that Minister and the Council with the approval of the Chairman of the Public Service Board.

(2) Where the services of any person are co-opted or a person is seconded under the provisions of this section, it does not prejudice that person's existing or accruing rights under the Public Service Act, 1904, or under any other Act applying to him as a public servant, and his service with the Council under this Act shall be regarded as service in the Public Service of the State for the purposes of determining those rights.

Contractual services.

24. (1) The Council may, with the approval of the Minister, engage under contract for services such artistic, professional, and technical or other assistance as may be necessary to enable the Council to carry out effectively its functions under this Act.

(2) A person engaged under the provisions of subsection (1) of this section is not a person appointed under the Public Service Act, 1904, and subject to this Act and to any award or agreement in force under the Industrial Arbitration Act, 1912, the Council may effect, suspend, and terminate the engagement subject to such terms and conditions as the Council thinks fit.

Treasurer's approval to borrowing.

25. (1) Where pursuant to subsection (3) of section 5 of this Act the Minister has approved in principle a proposed borrowing on the part of the Council, the Treasurer may determine—

- (a) the rate of interest;
- (b) the times of payment of interest;

- (c) the amount of, the time of, and the conditions relating to any repayment whether by way of instalment, deferred terms or otherwise; and
- (d) any other matters he considers appropriate, in relation to that borrowing, and may require the documents in respect of the transaction to be made available for perusal.

(2) If the Treasurer approves the particulars of the proposed borrowing and causes the Council to be so advised, the Council may proceed to finalise the negotiations but shall not execute any form of instrument of security required in respect of, or any instrument which acknowledges, the proposed loan until the instrument has been submitted to and approved by the Treasurer.

26. (1) Under the authority of this Act the Treasurer may guarantee, for and on behalf of the Crown in right of the State, the repayment of any amount borrowed by the Council from time to time under and in accordance with this Act, and any such guarantee may extend to the payment of interest on the amount borrowed and to such other charges in relation to the loan as the Treasurer may approve.

Treasurer's
guarantee.

(2) Before a guarantee is given by the Treasurer under this section, the Council shall give to the Treasurer such security as the Treasurer may require and shall execute all such instruments as may be necessary for the purpose.

(3) The amount of any moneys guaranteed under this section, to the extent to which such moneys are for the time being not repaid, is a charge on the Account and on the assets of the Council.

(4) The due payment of money payable by the Treasurer under a guarantee given by him under the authority of this section—

- (a) is hereby guaranteed by the State; and
- (b) shall be paid out of the money referred to in section 4 of the Audit Act, 1904, as "Public moneys".

(5) Where any moneys are paid by the Treasurer under this section, the Treasurer may determine the rate of interest and conditions upon which it shall be repaid by the Council, and any such moneys recovered shall be paid into the Public Account.

Funds of
the Council.

27. (1) The funds available to the Council for the purpose of enabling it to exercise its functions under this Act are—

- (a) moneys from time to time appropriated by Parliament for the purpose;
- (b) moneys received by the Council by way of fees, charges, gifts, or bequests, or otherwise under the authority of this Act;
- (c) moneys derived from the disposal of or dealing with real or personal property which the Council is authorized to effect under this Act, or derived as income by the Council in the exercise of its functions;
- (d) moneys borrowed by the Council under this Act, or made available to the Council from Commonwealth sources or elsewhere; and
- (e) such moneys as may be advanced by the Treasurer in any case where the moneys otherwise standing to the credit of the Account would be insufficient for the purposes of this Act.

(2) The moneys referred to in subsection (1) of this section shall be paid into and be placed to the credit of an account at the Treasury to be called "Western Australian Arts Council Account".

(3) All expenditure incurred by the Council for the purposes of this Act shall be paid from the Account and all moneys received by the Council under the authority of this Act shall be paid into the Account.

(4) Where any money standing to the credit of the Account is not immediately required for the purposes of this Act, it may be temporarily invested as the Treasurer may direct in any securities in which money in the Public Account, as that account is defined in section 4 of the Audit Act, 1904, may lawfully be invested.

(5) If in any year the whole of the sum appropriated by Parliament for the purpose of this Act is not expended, the unexpended balance shall be retained by the Council and may be expended in the performance of the duties of the Council in any subsequent year.

(6) The amount of any advance made to the Account by the Treasurer, to the extent to which such advance is for the time being not repaid, is a charge on the Account and on the assets of the Council.

28. (1) The Council shall keep full accounts in such form as the Treasurer may direct of all money received and paid by it or owing to it and of the purposes for which the money was so received or paid or is owing.

Council accounting.

(2) The Council shall keep a full account of its assets and liabilities and shall determine the amount of the depreciation and obsolescence of those assets in conjunction with, and subject to the approval of, the Auditor General.

(3) The Council shall cause its accounts to be balanced in each year to the thirtieth day of June in that year, and shall include in those accounts the accrued interest and sinking fund contributions relating to that year as determined by the Treasurer in respect of any portion of the General Loan Fund used for the purposes of the Council.

(4) The Auditor General shall have and may exercise in respect to the accounts and affairs of the Council all the powers conferred upon him by the Audit Act, 1904.

(5) All books and accounts of the Council maintained under this Act, and all documents relating thereto, shall be made available by the Council for inspection and copying during reasonable office hours by the Minister, the Treasurer or the Auditor General or any officer authorized by any of them.

Report and audit.

29. (1) The Council shall, in each year, as soon as practicable after the completion of the audit, submit to the Minister a report of its activities during the year ending on the preceding thirtieth day of June, containing a full account of the income and expenditure of the Council for that period and a statement of the financial position of the Council at the close of that year, audited by the Auditor General, and the report, if any, of the Auditor General thereon.

(2) The Minister shall cause a copy of every report received by him pursuant to subsection (1) of this section to be laid before each House of Parliament.

Audit of recipients, accounts.

30. (1) For the purposes of this section the term "recipient" means a person, or a society, association, organisation or group of persons, who receives from the Council any form of financial or material assistance.

(2) At any time when required by the Minister on the advice of the Council, a recipient shall submit to the Minister a full account of the money or other assistance so received and a statement of the manner in which it has been used.

(3) The Minister may require that the accounts of any recipient shall be audited by—

- (a) a person approved by the Minister; or
- (b) the Auditor General or an officer authorized by him,

as the Minister may specify, and for that purpose the accounts and records of the recipient relating to any such assistance, and all documents and vouchers connected therewith, shall be produced and may be inspected, examined and audited.

(4) The Auditor General, and any officer authorized by him, shall have and may exercise for the purposes of this section all or any of the powers conferred on the Auditor General with reference to the auditing of public accounts by the Audit Act, 1904.

31. In any court of competent jurisdiction an officer of the Council, who is authorized in writing by the Council in that behalf, may recover for the Council any dues, fees or other charges payable to the Council and that have not been paid.

Recovery of fees and charges.

32. (1) Any person who is, or has at any time been, a member or a deputy of a member of the Council is not personally liable for any act done, or omitted to be done, in good faith by the Council or by him acting as a member or deputy.

Protection of members, etc.

(2) Acceptance of or acting in the office of member of the Council by any person does not of itself render the provisions of the Public Service Act, 1904, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, 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.

33. (1) The Governor may make such regulations, not inconsistent with this Act, as he considers necessary and desirable for the proper administration of this Act or for achieving the objects and purposes of this Act.

Regulations.

(2) The regulations may prescribe penalties, not exceeding a fine of two hundred dollars in respect of a breach of any of the regulations.

(3) The regulations may require that any information, account, document or form required to be given or furnished thereunder shall be verified by statutory declaration.