

Arts and Culture Trust Bill 2020

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Western Australia

LEGISLATIVE ASSEMBLY

Arts and Culture Trust Bill 2020

A Bill for

An Act —

- **to establish the Arts and Culture Trust; and**
- **to repeal the *Perth Theatre Trust Act 1979*; and**
- **to amend certain other Acts as a consequence of this Act; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Arts and Culture Trust Act 2020*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — 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, unless the contrary intention appears —

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

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) the creation, production or delivery of cultural or artistic activities; or
- (b) the provision of 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;

- 1 **deputy chairperson** means the person designated under
2 section 18(1) as the deputy chairperson of the Board;
- 3 **LA Act** means the *Land Administration Act 1997*;
- 4 **misconduct**, in relation to a person who holds office as a Board
5 member or the CEO, includes conduct that —
- 6 (a) brings the Trust into disrepute; or
- 7 (b) otherwise renders the person unfit to hold the office
8 even though the conduct does not relate to a duty of the
9 office;
- 10 **place** means any land, building or structure (whether permanent
11 or temporary) or any part of any land, building or structure;
- 12 **remuneration** has the meaning given in the *Salaries and*
13 *Allowances Act 1975* section 4(1);
- 14 **resident company** means an arts organisation declared under
15 section 5 to be a resident company for the purposes of this Act;
- 16 **staff member** means —
- 17 (a) the CEO; or
- 18 (b) a person appointed, employed or engaged as mentioned
19 in section 52;
- 20 **ticketing services**, for an activity, means management services
21 relating to the issue and sale of admission tickets for the
22 activity;
- 23 **Trust** means the Arts and Culture Trust established under
24 section 7(1);
- 25 **Trust property** means —
- 26 (a) any Trust venue; or
- 27 (b) any other real or personal property —
- 28 (i) owned by, or leased to, the Trust; or
- 29 (ii) vested in, or placed under the care, control and
30 management of, the Trust under a written law;

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

8 **Trust venue programming** means the selection, procurement

9 and scheduling of activities at Trust venues;

10 **unable to act**, in relation to a Board member, means unable to

11 act as a Board member for any reason, including the

12 following —

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

16 **venue** means —

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

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

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

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

3 (1) The Minister may, by notice published in the *Gazette*, declare
4 an arts organisation to be a resident company for the purposes of
5 this Act if the arts organisation —

6 (a) presents performances or other activities primarily at
7 1 or more Trust venues; and

8 (b) receives funding from a department of the Public
9 Service, or other agency or instrumentality of the State.

10 (2) For the purposes of subsection (1), it does not matter whether or
11 not the arts organisation —

12 (a) presents performances or other activities other than at
13 Trust venues; or

14 (b) is based in offices at a Trust venue.

15 **6. Act binds Crown**

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

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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;

- 1 (b) to use, or authorise the use of, Trust venues and other
2 Trust property for —
- 3 (i) activities of an artistic, cultural, recreational or
4 educational nature; or
- 5 (ii) the purpose of public entertainment or recreation;
6 or
- 7 (iii) any public purpose approved by the Minister;
- 8 (c) to coordinate Trust venue programming and the use of
9 Trust venues, and other Trust property, for activities and
10 purposes referred to in paragraph (b);
- 11 (d) to provide, maintain, improve and promote facilities,
12 amenities and services at Trust venues for —
- 13 (i) the instruction, entertainment and convenience of
14 the public; or
- 15 (ii) the effective operation of Trust venues;
- 16 (e) to encourage, foster, promote and facilitate the use and
17 enjoyment of Trust venues and other Trust property;
- 18 (f) without limiting paragraph (e), to promote, or take part
19 in promoting, activities conducted at Trust venues;
- 20 (g) to promote public awareness of, and foster public
21 interest in, matters relating or incidental to culture and
22 the arts;
- 23 (h) without limiting paragraph (g), to promote and provide
24 educational and training activities in relation to culture
25 and the arts;
- 26 (i) to perform other functions consistent with the use and
27 enjoyment of Trust venues as the Trust considers
28 appropriate;
- 29 (j) to perform other functions conferred on the Trust under
30 this Act or another written law;
- 31 (k) to perform other functions necessary or incidental to the
32 functions mentioned in paragraphs (a) to (j).

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- 1 (3) In performing its functions, the Trust must —
- 2 (a) recognise the role of resident companies and the
- 3 contributions they make to culture and the arts in
- 4 Western Australia; and
- 5 (b) seek to support resident companies in conducting their
- 6 activities at Trust venues and, in particular, on matters
- 7 relating to —
- 8 (i) the leasing and hiring out of Trust venues and
- 9 other Trust property; and
- 10 (ii) Trust venue programming;
- 11 and
- 12 (c) have regard to, and seek to implement, any objectives
- 13 for Trust venues prescribed for the purposes of this
- 14 paragraph, being matters that are of importance to the
- 15 establishment, care, control, management, operation,
- 16 maintenance, development or improvement of Trust
- 17 venues.

18 **11. Trust's powers**

- 19 (1) In this section —
- 20 *acquire* includes taking on lease or licence or in any other
- 21 manner in which an interest in property may be acquired;
- 22 *business arrangement* means a company, a partnership, a trust,
- 23 a joint venture, an arrangement or agreement for sharing profits
- 24 or an arrangement or agreement for sponsorship;
- 25 *dispose of* includes disposing of by way of lease or licence or in
- 26 any other manner in which an interest in property may be
- 27 disposed of;
- 28 *participate* in a business arrangement includes form, promote,
- 29 establish, enter into, manage, dissolve, wind up and do anything
- 30 incidental to the business arrangement;
- 31 *work* includes the following —
- 32 (a) the development or redevelopment of an area of land;

- 1 (b) the construction, reconstruction or demolition of any
2 building;
- 3 (c) the provision of audience accommodation, either seating
4 or standing or both.
- 5 (2) The Trust has all the powers it needs to perform its functions.
- 6 (3) The Trust may, for the purposes of performing any of its
7 functions —
- 8 (a) acquire, hold, dispose of or otherwise deal in real or
9 personal property; and
- 10 (b) carry out, or arrange to be carried out, work in
11 connection with the maintenance, development and
12 improvement of any Trust venue and, in particular, for
13 the purpose of making any Trust venue suitable for the
14 activities and purposes referred to in section 10(2)(b);
15 and
- 16 (c) enter into a contract or other arrangement, including a
17 contract or arrangement for the provision of services to
18 the Trust; and
- 19 (d) without limiting paragraph (c), enter into a contract or
20 arrangement for any person to manage any Trust venue;
21 and
- 22 (e) provide, or permit any person to provide, refreshments
23 (including liquor) at Trust venues and apply for, hold
24 and dispose of any licence, permit or other authority
25 required in connection with the provision of those
26 refreshments; and
- 27 (f) participate in a business arrangement and acquire, hold
28 and dispose of shares, units or other interests in or
29 relating to a business arrangement; and
- 30 (g) cooperate with, and provide financial or other assistance
31 to, other bodies and individuals; and
- 32 (h) produce and deal in any equipment, facilities or system
33 associated with the performance of its functions; and

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- 1 (i) develop and turn to account any technology, software,
2 resource or intellectual property that relates to its
3 functions and, for that purpose, apply for, hold, receive,
4 exploit and dispose of any intellectual property; and
- 5 (j) provide and turn to account advertising opportunities or
6 opportunities to participate in arrangements in the nature
7 of advertising or having a purpose similar to advertising;
8 and
- 9 (k) use its expertise and resources to provide consultancy,
10 management, advisory or other services for a fee or
11 otherwise; and
- 12 (l) without limiting paragraph (k), provide, for a fee or
13 otherwise, ticketing services for any activity at a Trust
14 venue or any place that is not a Trust venue; and
- 15 (m) require payment of rent, fees or other charges for, or in
16 connection with —
- 17 (i) the hire or use of a Trust venue, or any part of a
18 Trust venue, or any other Trust property; or
- 19 (ii) entry to a Trust venue or any part of a Trust
20 venue; or
- 21 (iii) admission to any activity at a Trust venue; or
- 22 (iv) the parking of vehicles on or in any part of a
23 Trust venue;
- 24 and
- 25 (n) fix the amount of rent, fees or charges referred to in
26 paragraphs (k), (l) and (m) with power to waive, reduce
27 or refund the amount payable in particular cases; and
- 28 (o) produce and publish information on matters related to its
29 functions; and
- 30 (p) appoint or engage agents or attorneys; and
- 31 (q) act as agent for other persons.
- 32 (4) Subsections (2) and (3) are subject to sections 12, 13 and 14.

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

16 **12. General restrictions on Trust’s powers**

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

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- 1 **13. Requirement for approval to participate in business**
2 **arrangements**
- 3 (1) The Trust must not exercise a power conferred by
4 section 11(3)(f) in relation to a business arrangement unless the
5 terms and conditions of that business arrangement are terms and
6 conditions approved by the Minister and the Treasurer in respect
7 of —
8 (a) that business arrangement; or
9 (b) business arrangements of that class; or
10 (c) business arrangements generally.
- 11 (2) The Treasurer may, by written notice given to the Trust, exempt
12 any business arrangement, or class of business arrangement,
13 from the operation of subsection (1) either unconditionally or on
14 conditions specified in the notice.
- 15 (3) A notice under subsection (2) may be revoked or amended by
16 the Treasurer by written notice given to the Trust.
- 17 (4) The Treasurer may also give directions to be complied with
18 generally by the Trust in the exercise of the power referred to in
19 subsection (1).
- 20 **14. Requirement for approval to provide ticketing services for**
21 **activities not at Trust venues**
- 22 (1) The Trust must not exercise the power conferred by
23 section 11(3)(l) to provide ticketing services for any activity at
24 any place that is not a Trust venue without the Minister’s
25 written approval.
- 26 (2) The Minister may, by written notice given to the Trust, exempt
27 ticketing services for any activity, or class of activities, at any
28 place, or class of places, from the operation of subsection (1)
29 either unconditionally or on conditions specified in the notice.
- 30 (3) A notice under subsection (2) may be revoked or amended by
31 the Minister by written notice given to the Trust.

- 1 (4) The Minister may also give directions to be complied with
2 generally by the Trust in the exercise of the power referred to in
3 subsection (1).

4 **15. Delegation**

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

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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 is to have a board.
- (2) The Board is the governing body of the Trust and, in the name of the Trust, is to 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.

1 **18. Chairperson and deputy chairperson**

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

11 **19. Term of office**

- 12 A Board member —
- 13 (a) holds office for the period, not exceeding 4 years,
14 specified in the instrument of appointment; and
- 15 (b) is eligible for reappointment once or more than once.

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

- 17 (1) The office of a Board member becomes vacant if the Board
18 member —
- 19 (a) dies, resigns or is removed from office under this
20 section; or
- 21 (b) is, according to the *Interpretation Act 1984* section 13D,
22 a bankrupt or a person whose affairs are under
23 insolvency laws; or
- 24 (c) is convicted of an offence punishable by imprisonment
25 for more than 12 months; or
- 26 (d) is convicted of an offence under section 36(1) or (2)
27 or 67(1).
- 28 (2) A Board member may at any time resign from office by written
29 notice given to the Minister.

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

17 **21. Extension of term of office**

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

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

28 **22. Leave of absence**

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

1 **23. Alternate Board members**

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

13 **24. Remuneration and allowances**

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

17 **Subdivision 2 — Board meetings**

18 **25. Holding meetings**

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

25 **26. Quorum**

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

1 **27. Presiding Board members**

2 (1) The chairperson, if present, is to preside at a meeting of the
3 Board.

4 (2) If neither the chairperson, nor the deputy chairperson acting as
5 the chairperson, is presiding under subsection (1), the Board
6 members present at the meeting are to elect 1 of their number to
7 preside.

8 **28. Procedure at meetings**

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

11 **29. Voting**

12 (1) At a meeting of the Board, each Board member present has a
13 deliberative vote unless section 37 prevents the Board member
14 from voting.

15 (2) In the case of an equality of votes, the presiding Board member
16 has a casting vote in addition to a deliberative vote.

17 (3) A question is resolved according to how a majority of the votes
18 are cast.

19 **30. Holding meetings remotely**

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

25 **31. Resolution without meeting**

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

- 1 **32. CEO and Department CEO may attend meetings**
- 2 (1) In this section —
- 3 *authorised person* means —
- 4 (a) the CEO; or
- 5 (b) a person authorised in writing by the CEO to attend a
- 6 meeting of the Board as the representative of the CEO;
- 7 or
- 8 (c) the Department CEO; or
- 9 (d) a person authorised in writing by the Department CEO
- 10 to attend a meeting of the Board as the representative of
- 11 the Department CEO.
- 12 (2) An authorised person may, subject to subsection (3), attend
- 13 meetings of the Board and participate in its deliberations but
- 14 cannot vote at a meeting of the Board.
- 15 (3) If the Board requests the CEO, or a person referred to in
- 16 paragraph (b) of the definition of *authorised person*, not to
- 17 attend a particular meeting, or part of a particular meeting, of
- 18 the Board, the CEO or other person (as the case may be) must
- 19 comply with the request.
- 20 (4) Sections 30, 36, 37 and 38 apply, with any necessary
- 21 modifications, to an authorised person in relation to attendance
- 22 at meetings of the Board as if the authorised person were a
- 23 Board member.
- 24 **33. Minutes**
- 25 The Board must cause accurate minutes to be kept of the
- 26 proceedings at each of its meetings.

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Subdivision 3 — Committees

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34. Committees

3

(1) The Board may —

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(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

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(b) discharge or alter any committee it has appointed.

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(2) A committee may include persons who are not Board members but must include at least 1 Board member.

9

10

(3) The Board may give directions to a committee on the following matters —

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12

(a) the functions to be performed by the committee;

13

(b) the committee's procedures;

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(c) reporting by the committee on the performance of its functions.

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(4) A committee must comply with a direction of the Board.

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(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.

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(6) A committee must —

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(a) keep minutes of its meetings to a standard approved by the Board; and

22

23

(b) provide the Board with a copy of the minutes of each meeting.

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35. Remuneration and allowances

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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.

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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) is to 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.

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

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

6 Section 37 does not apply if —

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

20 **39. Quorum where section 37 applies**

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

28 **Subdivision 5 — Execution of documents**

29 **40. Execution of documents by Trust**

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

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

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

22 **Subdivision 1 — The CEO**

23 **41. CEO**

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

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

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

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

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

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

11 **44. Appointment of CEO**

12 (1) If section 42(a) applies, the CEO is to be appointed and hold
13 office under the *Public Sector Management Act 1994* Part 3.

14 (2) If section 42(b) or 43 applies —

- 15 (a) the CEO is to be appointed by the Trust; and
16 (b) Subdivision 2 has effect with respect to the tenure,
17 salary and conditions of service of the CEO and the
18 other matters provided for in that Subdivision.

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

21 **45. Application**

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

23 **46. Term of office**

24 The CEO holds office —

- 25 (a) for a term, not exceeding 5 years, fixed by the
26 instrument of appointment; and
27 (b) is eligible for reappointment once or more than once.

1 **47. Remuneration and allowances**

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

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

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

11 (1) The office of CEO becomes vacant if the CEO —

- 12 (a) dies, resigns or is removed from office under this
13 section; or
14 (b) is, according to the *Interpretation Act 1984* section 13D,
15 a bankrupt or a person whose affairs are under
16 insolvency laws; or
17 (c) is convicted of an offence punishable by imprisonment
18 for more than 12 months; or
19 (d) is convicted of an offence under section 67(1).

20 (2) The CEO may at any time resign from office by written notice
21 given to the Trust.

22 (3) Subject to subsection (4), the resignation takes effect on the day
23 on which it is received by the Trust.

24 (4) If the resignation specifies a day on which it is to have effect
25 that is later than the day on which the resignation is received by
26 the Trust, the resignation takes effect on the day specified in the
27 resignation.

28 (5) The Trust may remove the CEO from office —

- 29 (a) on the grounds of neglect of duty; or
30 (b) on the grounds of misconduct or incompetence; or

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

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

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

15 **50. Other conditions of service**

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

19 **51. Acting CEO**

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

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

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

5 **52. Other staff of Trust**

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

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

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

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Part 3 Administration of the Trust

Division 2 Staff of the Trust

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

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

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

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

2 **Division 1 — Accountability**

3 **55. Minister may give directions**

- 4 (1) The Minister may give written directions to the Trust with
5 respect to the performance of its functions, either generally or in
6 relation to a particular matter, and the Trust must give effect to
7 any such direction.
- 8 (2) The Minister must cause the text of any direction under
9 subsection (1) to be laid before each House of Parliament within
10 14 days after the day on which the direction is given.
- 11 (3) The text of a direction under subsection (1) must be included in
12 the annual report submitted by the accountable authority of the
13 Trust under the *Financial Management Act 2006* Part 5.

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

15 The Trust must —

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

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

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

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

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

14 The Trust or another person performing a function under this

15 Act is not liable —

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

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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 is to 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.

1 **63. Guarantees by Treasurer**

2 (1) The Treasurer, on the Minister's recommendation, may, in the
3 name and on behalf of the State, guarantee the payment of any
4 money payable by the Trust in respect of money borrowed by it
5 under section 62.

6 (2) A guarantee must be in a form, and contain terms and
7 conditions, determined by the Treasurer.

8 (3) Before a guarantee is given, the Trust must —

9 (a) give the Treasurer any security the Treasurer requires;
10 and

11 (b) execute all instruments that are necessary for the
12 purpose.

13 (4) The Treasurer may fix charges to be paid by the Trust to the
14 credit of the Consolidated Account in respect of a guarantee
15 given under this section.

16 **64. Effect of guarantee**

17 (1) The due payment of money under a guarantee given under
18 section 63 must be —

19 (a) made by the Treasurer; and

20 (b) charged to, and paid out of, the Consolidated Account,
21 which this subsection appropriates accordingly.

22 (2) The Treasurer must cause to be credited to the Consolidated
23 Account any amounts received or recovered from the Trust or
24 otherwise in respect of any payment made by the Treasurer
25 under a guarantee given under section 63.

26 **65. Notice of financial difficulty**

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

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

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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).

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

- 2 (1) For the purposes of this Act, the use or disclosure of
3 information is authorised if the information is used or disclosed
4 in good faith in any of the following circumstances —
5 (a) for the purpose of, or in connection with, performing a
6 function under this or any other Act;
7 (b) as otherwise authorised or required under or for the
8 purposes of this Act;
9 (c) under another law;
10 (d) to a court or other person or body acting judicially in the
11 course of proceedings before the court, person or body;
12 (e) under an order of a court or other person or body acting
13 judicially;
14 (f) any other circumstances prescribed for the purposes of
15 this subsection.

- 16 (2) If the use or disclosure of information is authorised under
17 subsection (1) —
18 (a) no civil or criminal liability is incurred in respect of the
19 use or disclosure; and
20 (b) the use or disclosure is not to be regarded as —
21 (i) a breach of any duty of confidentiality or secrecy
22 imposed by law; or
23 (ii) a breach of professional ethics or standards or
24 any principles of conduct applicable to a
25 person's employment; or
26 (iii) unprofessional conduct.

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

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

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

13 **70. General regulations**

- 14 (1) The Governor may make regulations prescribing matters —
15 (a) required or permitted by this Act to be prescribed; or
16 (b) necessary or convenient to be prescribed for giving
17 effect to this Act.
- 18 (2) Without limiting subsection (1), the regulations may provide
19 for, authorise, prescribe, require, prohibit, restrict or otherwise
20 regulate the following —
- 21 (a) the care, control, management, maintenance,
22 development and improvement of Trust venues and
23 other Trust property;
- 24 (b) the use and hiring out of Trust venues or any part of a
25 Trust venue;
- 26 (c) the conduct of activities at Trust venues, including in
27 relation to noise levels, lighting and pyrotechnics;
- 28 (d) the times at which a Trust venue, or any part of a Trust
29 venue, is to be open or closed to the public;
- 30 (e) the maintenance of good order at Trust venues;
- 31 (f) the duties and conduct of persons at Trust venues;

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

22 **71. Traffic regulations**

- 23 (1) In this section —
- 24 *authorised person* means a person appointed under regulations
25 mentioned in section 70(2)(k).
- 26 (2) Without limiting section 70, the regulations may provide for,
27 authorise, prescribe, require, prohibit, restrict or otherwise
28 regulate the following —
- 29 (a) the use of vehicles on or in any part of a Trust venue;
- 30 (b) the control, supervision and management of parking or
31 standing areas on or in any part of a Trust venue.

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- 1 (3) The regulations may —
- 2 (a) include provisions as to speed, manner of driving, class
3 of vehicles, routes, entrances and exits, one-way traffic,
4 noise, parking and standing and the control of traffic
5 generally; and
- 6 (b) provide for the payment of fees to the Trust in respect of
7 the parking of vehicles on or in any part of a Trust venue
8 and the determination and collection of those fees; and
- 9 (c) provide for the issue of permits to park vehicles on or in
10 any part of a Trust venue for periods, and on other terms
11 and conditions specified in the permits, and the
12 amendment, suspension or revocation of those permits;
13 and
- 14 (d) provide for the display, erection or marking of signs for
15 the purposes of controlling traffic and the protection of
16 those signs, and any equipment relating to parking and
17 standing areas, against misuse, damage or interference;
18 and
- 19 (e) require a person in charge of a vehicle on or in any part
20 of a Trust venue to —
- 21 (i) obey the orders and directions of an authorised
22 person given for the purposes of controlling
23 traffic; or
- 24 (ii) if requested to do so by an authorised person
25 who reasonably suspects that the person has
26 committed an offence against the regulations,
27 give their name and address to the authorised
28 person;
- 29 and
- 30 (f) prescribe the following —
- 31 (i) the circumstances under which an authorised
32 person may remove a vehicle, or cause it to be
33 removed, from any area of a Trust venue to a

- 1 place specified in the regulations (whether within
2 the Trust venue or not);
- 3 (ii) the scale of fees to be paid to the Trust to recover
4 the vehicle from the place;
- 5 (iii) the circumstances in which the Trust may hold
6 the vehicle until the fees are paid;
- 7 and
- 8 (g) prescribe evidentiary provisions in relation to speed
9 measuring equipment and the use of that equipment; and
- 10 (h) prohibit the removal by any person, other than the driver
11 of a vehicle in respect of which an offence against a
12 regulation is alleged to have been committed, of any
13 notice relating to that offence attached to the vehicle or
14 left in or on the vehicle by a person authorised under the
15 regulations to leave the notice.

16 **72. Review of Act**

- 17 (1) The Minister must review the operation and effectiveness of this
18 Act, and prepare a report based on the review —
- 19 (a) as soon as practicable after the 5th anniversary of the day
20 on which this section comes into operation; and
- 21 (b) after that, at intervals of not more than 10 years.
- 22 (2) The review must address the following —
- 23 (a) the effectiveness of the operations of the Trust;
- 24 (b) the need for the continuation of the functions of the
25 Trust;
- 26 (c) any other matters that appear to the Minister to be
27 relevant to the operation and effectiveness of this Act.
- 28 (3) The Minister must cause the report to be laid before each House
29 of Parliament as soon as practicable after the report is prepared,
30 but not later than 12 months after the 5th anniversary or the
31 expiry of the period of 10 years, as the case may be.

1 **Part 6 — Repeal and consequential amendments**

2 **Division 1 — Repeal of the *Perth Theatre Trust Act 1979***

3 **73. *Perth Theatre Trust Act 1979* repealed**

4 The *Perth Theatre Trust Act 1979* is repealed.

5 **Division 2 — Consequential amendments**

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

7 (1) This section amends the *Constitution Acts Amendment Act 1899*.

8 (2) In Schedule V Part 3 delete the item for The Perth Theatre Trust
9 established by the *Perth Theatre Trust Act 1979*.

10 (3) In Schedule V Part 3 insert in alphabetical order:

11

12 The Arts and Culture Trust established under the *Arts and*
13 *Culture Trust Act 2020*.

14

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

16 (1) This section amends the *Financial Management Act 2006*.

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

18 (3) In Schedule 1 insert in alphabetical order:

19

20 Arts and Culture Trust

21

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

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

1 (2) In Schedule 2 before item 3 insert:

2

1 Arts and Culture Trust, established under the *Arts and Culture Trust Act 2020*

3

4 (3) In Schedule 2 delete item 35.

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

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

9 (2) Delete section 57.

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

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

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

1 **Part 7 — Transitional and savings provisions**

2 **Division 1 — Preliminary**

3 **79. Terms used**

4 In this Part —

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

7 *asset* —

8 (a) means any legal or equitable estate or interest (whether
9 present or future, whether vested or contingent and
10 whether personal or assignable) in real or personal
11 property of any description; and

12 (b) includes any money, security, chose in action or
13 document;

14 *commencement day* means the day on which section 73 comes
15 into operation;

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

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

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

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

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

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

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

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

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

4 **81. Perth Theatre Trust abolished**

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

7 **Division 3 — Transfer of the Perth Theatre Trust’s assets,**
8 **rights and liabilities**

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

- 10 (1) On commencement day —
- 11 (a) the assets and rights of the Perth Theatre Trust
12 immediately before commencement day are assigned to
13 and become assets and rights of the Arts and Culture
14 Trust; and
- 15 (b) the liabilities of the Perth Theatre Trust immediately
16 before commencement day are assigned to and become
17 liabilities of the Arts and Culture Trust.
- 18 (2) On and after commencement day, any proceedings that
19 immediately before commencement day might have been
20 brought or continued by the Perth Theatre Trust may be brought
21 or continued by the Arts and Culture Trust.
- 22 (3) On and after commencement day, any remedy that immediately
23 before commencement day might have been available against or
24 to the Perth Theatre Trust is available against or to the Arts and
25 Culture Trust.

26 **83. Perth Theatre Trust Account**

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

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

15 **84. Investments**

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

23 **85. Reserves**

- 24 (1) This section applies to any Crown land that, immediately before
25 commencement day, was a reserve under the LA Act section 41
26 for which the Perth Theatre Trust was the management body
27 under the LA Act section 46(1).
- 28 (2) On commencement day —
29 (a) Crown land to which this section applies is to be taken
30 to be a reserve under the LA Act section 41 for the
31 purposes of this Act; and

- 1 (b) the Arts and Culture Trust is to be taken to be the
2 management body of the reserve under the LA Act
3 section 46(1).
- 4 (3) For the purposes of section 86 and the purposes of the LA
5 Act —
- 6 (a) subsection (2)(a) must be treated as if it were an order
7 made under the LA Act section 51 changing the purpose
8 of the reserve; and
- 9 (b) subsection (2)(b) must be treated as if it were —
- 10 (i) an order made under the LA Act section 50(1)(a)
11 revoking the management order placing the care,
12 control and management of the reserve with the
13 Perth Theatre Trust and specifying that any
14 interests that existed in, or any caveats that
15 existed in respect of, the reserve immediately
16 before commencement day continue to exist in
17 respect of the reserve on and after
18 commencement day; and
- 19 (ii) a management order made under the LA Act
20 section 46(1) placing the care, control and
21 management of the reserve with the Arts and
22 Culture Trust subject to any conditions (with the
23 changes necessary to take account of differences
24 as to the purpose and management body) to
25 which the management order referred to in
26 subparagraph (i) was subject immediately before
27 commencement day.

28 **86. Registration of documents**

- 29 (1) In this section —
- 30 *relevant official* means —
- 31 (a) the Registrar of Titles under the *Transfer of Land*
32 *Act 1893*; or

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- 1 (b) the Registrar of Deeds and Transfers under the
2 *Registration of Deeds Act 1856*; or
3 (c) any other person authorised by a written law to record
4 and give effect to the registration of documents.

5 (2) A relevant official must —

- 6 (a) take notice of this Part; and
7 (b) record and register in the appropriate manner the
8 documents necessary to give effect to this Part.

9 **87. Exemption from State tax**

10 (1) In this section —

11 *State tax* includes —

- 12 (a) duty chargeable under the *Duties Act 2008*; and
13 (b) any other tax, duty, fee, levy or charge under a law of
14 the State.

15 (2) State tax is not payable in relation to —

- 16 (a) anything that occurs by operation of this Part; or
17 (b) anything done (including a transaction entered into or an
18 instrument or document of any kind made, executed,
19 lodged or given) under this Part, or to give effect to this
20 Part, or for a purpose connected with or arising out of
21 giving effect to this Part.

22 (3) The Minister may certify in writing that —

- 23 (a) a specified thing occurred by operation of this Part; or
24 (b) a specified thing was done under this Part, or to give
25 effect to this Part, or for a purpose connected with or
26 arising out of giving effect to this Part.

27 (4) For all purposes and in all proceedings, a certificate under
28 subsection (3) is sufficient evidence of the matters it certifies,
29 except so far as the contrary is shown.

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

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

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

22 **89. Other staff**

- 23 (1) A person who immediately before commencement day was a
24 public service officer appointed under the *Public Sector*
25 *Management Act 1994* Part 3 to enable the Perth Theatre Trust
26 to perform its functions is, on and after commencement day,
27 taken to be a public service officer appointed under that Act for
28 the purposes of section 52(1) of this Act on the same terms and
29 conditions that applied to the person immediately before
30 commencement day.

- 1 (2) A person who immediately before commencement day was
2 appointed by the Perth Theatre Trust under section 17(1)(b) of
3 the repealed Act is, on and after commencement day, taken to
4 have been employed by the Arts and Culture Trust under
5 section 52(2) of this Act on the same terms and conditions that
6 applied to the person immediately before commencement day.
- 7 (3) A person who immediately before commencement day was
8 employed on a casual or temporary basis by the Perth Theatre
9 Trust under section 17A(1) of the repealed Act is, on and after
10 commencement day, taken to have been employed by the Arts
11 and Culture Trust under section 52(2) of this Act on the same
12 terms and conditions that applied to the person immediately
13 before commencement day.
- 14 (4) Except as otherwise agreed by a person referred to in this
15 section, the operation of this section does not —
- 16 (a) affect the person’s remuneration; or
17 (b) affect the person’s existing or accruing rights in respect
18 of annual leave, long service leave, personal leave or
19 any other leave; or
20 (c) affect any rights under a superannuation scheme; or
21 (d) interrupt the continuity of the person’s service.

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

23 **90. Completion of things commenced**

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

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

2 (1) In this section —

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

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

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

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

14 (1) In this section —

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

17 (a) a contract, agreement or other instrument to which the
18 Perth Theatre Trust is a party or which contains a
19 reference to the Perth Theatre Trust;

20 (b) an arrangement with the Council of the City of Perth
21 entered into by the Perth Theatre Trust under
22 section 19(1) of the repealed Act.

23 (2) A relevant agreement has effect on and after commencement
24 day as if —

25 (a) the Arts and Culture Trust were substituted for the Perth
26 Theatre Trust as a party to the relevant agreement; and

27 (b) any reference in the relevant agreement to the Perth
28 Theatre Trust were, unless the context otherwise
29 requires, amended to be or include a reference to the
30 Arts and Culture Trust.

1 **93. Business arrangements**

2 (1) Subsection (2) applies if immediately before commencement
3 day —

4 (a) the Perth Theatre Trust was exercising its powers under
5 section 16(2)(da) of the repealed Act in relation to a
6 business arrangement; and

7 (b) the terms and conditions of the business arrangement
8 were approved under section 16(3) of the repealed Act.

9 (2) On and after commencement day, the Arts and Culture Trust
10 may exercise its powers under section 11(3)(f) of this Act in
11 relation to the business arrangement as if the terms and
12 conditions of the business arrangement were approved under
13 section 13(1) of this Act.

14 (3) Subsection (4) applies if immediately before commencement
15 day —

16 (a) the Perth Theatre Trust was exercising its powers under
17 section 16(2)(da) of the repealed Act in relation to a
18 business arrangement; and

19 (b) the business arrangement was exempted, by notice under
20 section 16(4) of the repealed Act, from the operation of
21 section 16(3) of the repealed Act.

22 (4) On and after commencement day, the Arts and Culture Trust
23 may exercise its powers under section 11(3)(f) of this Act in
24 relation to the business arrangement as if the business
25 arrangement were exempted, by notice under section 13(2) of
26 this Act, from the operation of section 13(1) of this Act on the
27 same conditions (if any) specified in the notice under
28 section 16(4) of the repealed Act.

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

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

13 **Division 6 — Other transitional provisions**

14 **95. Transitional regulations**

- 15 (1) In this section —
- 16 *publication day*, for transitional regulations, means the day on
- 17 which the transitional regulations are published in the *Gazette*;
- 18 *specified*, in relation to transitional regulations, means specified
- 19 or described in the transitional regulations;
- 20 *transitional matter* —
- 21 (a) means a matter of a transitional nature that arises as a
- 22 result of —
- 23 (i) the repeal effected by section 73; or
- 24 (ii) an amendment made under Part 6; or
- 25 (iii) the enactment of this Act;
- 26 and
- 27 (b) includes a saving or application matter;
- 28 *transitional regulations* means regulations referred to in
- 29 subsection (2).

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

23 **96. Savings**

- 24 The operation of this Part must not be regarded as —
25 (a) a breach of contract or confidence or otherwise as a civil
26 wrong; or
27 (b) a breach of any contractual provision prohibiting,
28 restricting or regulating the assignment or transfer of
29 assets, rights or liabilities or the disclosure of
30 information; or
31 (c) giving rise to any right to damages or compensation; or

- 1 (d) giving rise to any remedy by a party to an instrument, or
2 as causing or permitting the termination of any
3 instrument, because of a change in the beneficial or legal
4 ownership of any asset, right or liability; or
5 (e) causing any contract or instrument to be void or
6 otherwise unenforceable; or
7 (f) releasing or allowing the release of any surety.

8

Defined terms

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

Defined term	Provision(s)
acquire.....	11(1)
activity	3
Arts and Culture Trust	3, 79
arts organisation	3
asset.....	79
authorised person	32(1), 71(1)
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
place	3
promote	10(1)
publication day.....	95(1)
relevant act.....	91(1)
relevant agreement	92(1)
relevant official	86(1)
remuneration	3
repealed Act	79
resident company	3
right.....	79
specified	95(1)
staff member	3
State tax	87(1)
this Part	79
ticketing services.....	3
transitional matter	95(1)

transitional regulations.....	95(1)
Trust.....	3
Trust property	3
Trust venue	3
Trust venue programming	3
unable to act.....	3
venue.....	3
work	11(1)