

## ARTS AND CULTURE TRUST BILL 2020

### EXPLANATORY MEMORANDUM

#### OVERVIEW OF THE BILL

Some of the State's most iconic theatres are managed by the Perth Theatre Trust (PTT). The Trust has served its role for many decades in accordance with the powers granted to it under the *Perth Theatre Trust Act 1979*.

Successive governments over many years have identified the need for reform in relation to statutory authorities and the management of State cultural assets. This included the 2015 Agency Expenditure Review and earlier reviews conducted by the Public Sector Commission.

The McGowan Government initiated a number of reforms to ensure that the WA public sector is modern, high-performing and capable of delivering future services to the community. The PTT, as part of the public sector, is included in the broader reform process.

While there have been some amendments to the *Perth Theatre Trust Act 1979* over the past forty years, these amendments were not related to comprehensive and wide-ranging reforms needed for a PTT to effectively meet current Government or community needs. The McGowan Government has a vision of a Trust which can manage not only theatres, but also other cultural assets entrusted to its care. This vision cannot be achieved with the PTT in its current form.

This Bill will rectify that situation by transforming the Trust and the legislative framework under which the PTT currently operates. The PTT will be replaced by a new statutory authority called the "Arts and Culture Trust". The new Trust will have greater responsibilities, broader powers and greater flexibility to carry out its duties.

#### Creation of a new and modern Trust

Part 2 of the Bill will establish the Arts and Culture Trust. The Trust will have a number of functions and duties along with the powers necessary to carry them out.

The new Trust will differ from the PTT in many regards. The most important reforms are as follows:

- The Trust's responsibility will extend to all kinds of art and cultural venues rather than just limited to theatres;
- The Trust will have greater power to engage in commercial activities in relation to the properties vested under its care;
- The Trust's Board will be nine members rather than eight, to make quorums and majority decisions easier to obtain;
- The Board members will be required to possess skills and experience which directly relate to the Trust's operations;
- Board members will be required to have different skills to ensure that the Trust's Board has a broad spectrum of knowledge to draw upon; and
- The Trust will be subject to special safeguards in relation to the use of information and the disclosure of conflicts of interest.

### **Increased partnership with arts organisations**

Part 1 of the Bill will allow the Minister for Culture and the Arts to declare a State-funded arts organisation to be a “resident company”. This reform recognises the importance of these organisations to the culture and artistic fabric of Western Australia by requiring the new Trust to consider their activities when conducting venue programming of Trust venues and other similar activities.

### **Maximising commercial potential**

The Bill will also provide the Trust with increased power to participate in commercial activities and business arrangements with arts organisations and the private sector. This will enable the Trust to optimise the business potential of the assets it controls, including those assets which are located near major commercial and tourism precincts.

By allowing the Trust to capitalise on this potential, the Trust will be able to maximise its resources, reduce reliance on State funding and result in flow-on benefits for businesses near Trust venues, such as creating much needed jobs in the cultural tourism sector, along with the hospitality and retail sectors.

For accountability purposes, the Bill requires the Trust to obtain the approval of the Minister and the Treasurer before entering any business arrangement that involves the acquisition of shares or other interests in a company, partnership, profit sharing or sponsorship agreements beyond an agreed financial limit or class of arrangement. This will ensure that the power is used wisely and provides maximum benefit for Trust operations.

### **Declaration of places to be venues**

The current legislative regime is restrictive and does not easily facilitate short term place activation opportunities that can arise within the cultural and artistic sector in places other than theatres.

To enable the new Trust to activate spaces to hold artistic and cultural events, the Bill will grant the Minister with the power to declare any part of the State a venue if it is intended to be used partially or wholly as a place for cultural and artistic purposes, for any duration of time that the Minister thinks fit.

A declaration will enable the area to be used by the new Trust to hold events and provides the Trust with board powers to manage and conduct those events. This reform provides a long-overdue opportunity for the Government, via the Trust, to host cultural and artistic events anywhere in the State.

### **Accountability of the Trust**

As a statutory authority and part of the public service, the Trust will be accountable to the Minister, the Government and the Parliament. This accountability will be achieved through audits by the Auditor General, via the ability of the Minister to issue directions to the Trust, and via compliance with other legislation.

### **Protection of Trust property**

To ensure the Trust has the ability to ensure the orderly and effective operation of permanent and temporary Trust venues (and which recognises the broader remit of the new Trust), Part 5 of the Bill provides the Governor with broad regulation making

powers in relation to various operational matters regarding Trust property. This includes:

- Care, control, management, maintenance and development of venues;
- Admission of people to Trust property;
- The behaviour of individuals on Trust property;
- Consumption of liquor at Trust venues;
- The imposition of fees and charges; and
- Traffic and parking management.

These regulations can be enforced with fines and will provide the Trust with a far greater ability to control and protect the assets vested in its care.

### **Transitional arrangements**

This Bill will mark the start of a significant period of transition, with the role of the PTT passing to the Arts and Culture Trust. To facilitate this change, Part 6 of the Bill includes consequential amendments to the following legislation:

- *Constitution Acts Amendment Act 1899*
- *Financial Management Act 2006*
- *Public Sector Management Act 1994*
- *State Superannuation (Transitional and Consequential Provisions) Act 2000*
- *Statutory Corporations (Liability of Directors) Act 1996*

These amendments will remove references to the PTT and replace them with references to the Arts and Culture Trust where necessary.

Part 7 of the Bill includes transitional provisions to allow an orderly handover of the former Trust's tasks, assets, liabilities and contractual obligations. This will ensure that the transition will not compromise any pre-existing business arrangements or the rights of the former Trust employees. These provisions will also enable the General Manager of the PTT to seamlessly transition into the role of the CEO of the Arts and Culture Trust.

If the Bill is unable to provide for a transitional matter, the Governor will be able to make regulations to deal with that matter.

## **CLAUSE NOTES**

Contained below is a brief description of each clause contained in the Arts and Culture Trust Bill 2020 (the Bill).

### **Part 1 – Preliminary**

#### ***Clause 1 – Short title***

Clause 1 cites the short title of the Arts and Culture Trust Bill 2020.

#### ***Clause 2 – Commencement***

This clause provides that Part 1 of the Bill will commence on the day on which the Bill receives Royal Assent.

The remainder of the Bill will come into effect on a day to be fixed by proclamation as it may require the preparation of regulations or other transitional matters.

#### ***Clause 3 – Terms used***

This clause sets out the terms defined in the Bill and their definitions.

The defined terms are:

**Activity** includes an event, performance, production, exhibit, demonstration, lecture or 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;

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

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

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

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

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

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

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

**Staff member** means –

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

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

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

**Trust property** means —

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

**Trust venue** means

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

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

**Unable to act**, in relation to a Board member, means unable to act as a Board member for any reason, including –

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

**Venue** means —

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

#### ***Clause 4 – Minister may declare places to be venues***

This clause allows the Minister to declare any place to be a venue for the purposes of the Bill, if the venue is used or will be used for cultural or artistic purposes.

The Minister can also issue temporary declarations, which only have effect for a defined period.

A declaration issued by the Minister must be published in the *Government Gazette*.

#### ***Clause 5 – Minister may declare arts organisations to be resident companies***

This clause allows the Minister to declare an arts organisation to be a resident company for the purposes of the Bill.

Subclause (1) provides the criteria an organisation must meet to be declared a resident company.

Specifically, the arts organisation must satisfy the Minister the organisation presents performances or other activities at one or more Trust venues and it receives funding from a State Government department, agency or instrumentality.

Subclause (2) provides it does not matter if the arts organisation presents performances at other venues or if they are based in a Trust venue.

A declaration made under this clause must be published in the *Government Gazette*.

#### ***Clause 6 – Act binds Crown***

This clause provides that the Bill binds the Crown in right of Western Australia and in all other capacities as far as the legislative powers of the Parliament permit the Bill to do so.

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

#### ***Clause 7 – Trust established***

This clause establishes the Arts and Culture Trust.

The Trust will be a body corporate with perpetual succession and proceedings may be taken by or against the Trust in its corporate name.

#### ***Clause 8 – Trust may use trading names***

This clause provides that the Trust may operate under one or more trading names as approved by the Minister.

Subclause (1) provides the Trust may use and operate under 1 or more trading names as approved by the Minister.

Subclause (2) provides a trading name may be an abbreviation or adaption of the Trust's name or any other name.

Notice of an approval of a trading name must be published in the *Government Gazette*.

### **Clause 9 – Trust’s status**

This clause provides that the Trust is an agent of the Crown and has the status, privileges and immunity of the Crown.

### **Clause 10 – Trust’s functions**

This clause sets out the functions of the Trust.

To ensure there is no confusion as to what activities the Trust may pursue in relation to promotion subclause (1) defines the term **promote**.

For the purposes of this clause, promote includes attracting, organising, commissioning, funding, investing in, supporting, marketing, advertising and acting as project manager in relation to an activity.

Subclause (2) provides the functions of the Trust, which include:

- (a) to establish, care for, control, manage, operate, maintain, develop and improve Trust venues and other Trust property;
- (b) to use, or authorise the use of, Trust venues for —
  - (i) activities of an artistic, cultural, recreational or educational nature; or
  - (ii) the purpose of public entertainment or recreation; or
  - (iii) any other public purpose approved by the Minister;
- (c) to coordinate the use of Trust venues for activities and purposes referred to in paragraph (b);
- (d) to provide, maintain, improve and promote facilities, amenities and services at Trust venues for —
  - (i) the instruction, entertainment and convenience of the public; and
  - (ii) the effective operation of Trust venues;
- (e) to encourage, foster, promote and facilitate the use and enjoyment of Trust venues and other Trust property;
- (f) without limiting paragraph (e), to promote, or take part in promoting, activities at Trust venues;
- (g) to promote public awareness of, and foster public interest in, matters relating or incidental to culture and the arts;
- (h) without limiting paragraph (g), to promote and provide educational and training activities in relation to culture and the arts;
- (i) to perform other functions consistent with the use and enjoyment of Trust venues as the Trust considers appropriate;
- (j) to perform other functions conferred on the Trust under this Bill or another written law;
- (k) to perform other functions necessary or incidental to the functions mentioned in paragraphs (a) to (j).

Subclauses (3)(a) and (b) provides in performing its functions, the Trust must recognise the role of resident companies (declared under clause 5 of the Bill) and the contributions they make to culture and the arts.

The Trust must also, in performing their functions, support residential companies in conducting their activities at Trust venues, particularly in relation to the use of Trust venues and Trust venue programming.

Subclause (3)(c) provides the Governor with a regulation making power to prescribe matters of importance which the Trust must have regard to and seek to implement that are of importance to the establishment, care, control, management, operation, maintenance, and development of improvement of Trust venues.

### **Clause 11 – Trust’s powers**

This clause sets out the powers of the Trust.

Subclause (1) sets out definitions in relation to the Trust’s powers. The defined terms include:

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

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

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

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

**Work** includes the following —

- (a) the development or redevelopment of an area of land;
- (b) the construction, reconstruction or demolition of any building;
- (c) the provision of audience accommodation, either seating or standing or both.

Subclause (2) provides the Trust will have all the powers necessary to perform the functions listed in clause 10 of the Bill.

Subclause (3) sets out the powers of the Trust, these include:

- (a) Acquiring, disposing of or dealing with real or personal property (subject to clause 14 of this Bill);
- (b) Carrying out or arranging work relating to maintaining, developing and improving trust property or making a venue suitable for activities referred to in clause 10(2)(b) of this Bill;
- (c) Entering into a contract or other arrangement, including in relation to the provision of services to the Trust;
- (d) Without limiting paragraph (c), entering into a contract or arrangement for any person to manage a Trust venue;



- (e) Provide (or permit others to provide) refreshments (including liquor) and apply for, hold or dispose of any licence or permit required to provide refreshments;
- (f) Participate in a business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement (subject to clause 13 of this Bill);
- (g) Cooperate with, and provide financial or other assistance to, other bodies and to individuals; and
- (h) Produce and deal in any equipment, facilities or system associated with the performance of a function;
- (i) Develop, apply for, hold, receive, exploit and dispose of any technology, software, resource or intellectual property;
- (j) Provide for advertising opportunities;
- (k) Use its expertise and resources to provide consultancy, management, advisory or other services for a fee or otherwise;
- (l) Without limiting paragraph (k), provide ticketing services at a non-Trust venue, for a fee or otherwise (subject to clause 14 of this Bill);
- (m) Require the payment of rent, fees or other charges in connection to the use and admission to Trust venues or Trust property;
- (n) Fix, waive, reduce or refund any rent, fees or other charges imposed;
- (o) Produce and publish information on matters related to its functions;
- (p) Appoint or engage agents or attorneys; and
- (q) Act as agents for other persons.

Subclauses (4) and (5) provides the Trust's general powers under subclauses (2) and (3) are only subject to clauses 12, 13 and 14 and are not limited in any other way.

Subclause (6) enables the Trust to accept any gift, bequest or other payment provided it is granted unconditionally or subject to conditions the Trust can satisfy. The Trust will also have the power to make gifts which are for the purposes of charity or other community benefit.

In using any of its power under the Bill, the Trust can act in conjunction with any person, firm, public authority, Department or an agency of the State or the Commonwealth.

### **Clause 12 – General restrictions on Trust’s power**

This clause provides the limitations on the Trust’s powers when dealing with real property.

Subclauses (1) and (2) provides the Trust’s power to dispose of land does not extend to the sale or permanent transfer of Crown land and any real property vested in the Trust or transferred under its control and is subject to any conditions of that vesting or transfer.

Furthermore, if the land is subject to the *Land Administration Act 1997*, the Trust’s power remains subject to that Act.

Subclause (3) provides the Minister’s written approval is needed before the Trust:

- Purchases a venue;
- Takes a venue on lease;
- Disposes of real property; or
- Enters into a contract for another person to manage a Trust venue (clause 11(3)(d)).

### **Clause 13 – Requirement for approval to participate in business arrangements**

This clause provides the Trust cannot participate in a business arrangement without approval of the Minister and the Treasurer.

Subclause (1) provides the Minister and Treasurer must approve the terms and conditions of a business arrangement prior to the Trust entering into an arrangement.

Subclauses (2) and (3) provides the Treasurer may, in writing, exempt any business arrangement or class of business arrangement from the need for Ministerial approval. An exemption can be unconditional or subject to conditions specified in the notice.

Any notice issued by the Treasurer may be revoked or amended by the Treasurer at any time by sending written notice to the Trust.

Subclause (4) provides the Treasurer with the power to give directions to the Trust regarding the operation of the business arrangement.

### **Clause 14 – Requirement for approval to provide ticketing services for activities not at Trust venues**

This clause provides that the Trust cannot provide ticketing services for any activity outside of a Trust venue without the approval of the Minister.

Subclause (1) provides the Minister must approve the Trust providing ticketing services for any activity outside of Trust venues.

Subclauses (2) and (3) provides the Minister may, in writing, exempt ticketing services for any activity or class of activities from the need for Ministerial approval. An exemption can be unconditional or subject to conditions specified in the notice.

Any notice issued by the Minister may be revoked or amended by the Minister at any time by sending written notice to the Trust.

Subclause (4) provides the Minister with the power to give directions to the Trust regarding how ticketing services may be provided.

### ***Clause 15 – Delegation***

This clause provides for the delegation of Trust powers and duties.

Subclauses (1) and (2) provides that any power or duty of the Trust may be delegated to a Board member, a staff member or a committee formed by the Trust. All delegations must be in writing and executed by the Trust.

Subclause (3) prevents a person or committee who holds a delegation from delegating the power or duty to another person.

Subclause (4) provides if a delegate exercises a power or duty delegated to them, they are presumed to be acting in accordance to the terms of that delegation unless the contrary is shown.

Subclause (5) provides this clause does not limit the ability of the Trust to perform a function through an officer or agent.

Subclause (6) excludes the execution of documents, as that matter is dealt with under clause 40(5) of the Bill (Execution of documents by Trust).

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

### **Division 1 – The Board**

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

##### ***Clause 16 – Board is governing body***

This clause provides for the governance of the Trust and provides the Trust will be governed by a Board which will perform all the Trust's functions in the Trust's name.

##### ***Clause 17 – Board membership***

This clause provides for the membership of the Trust's Board.

Subclauses (1) and (2) provides the Board will have nine members appointed by the Minister, consisting of:

- (a) At least three members with knowledge and experience in one or more of the following:
  - (i) Commerce;
  - (ii) Law
  - (iii) Financial management;
  - (iv) Human resources management; and
  - (v) Marketing;
- (b) At least two members with knowledge and experience in infrastructure planning and management; and
- (c) All other members are to have knowledge and experience in a field that, in the Minister's opinion, relates to the Trust's functions.

Subclause (3) prevents the CEO of the Trust and the CEO of the Department administering the Act from being appointed to the Board.

### ***Clause 18 – Chairperson and Deputy Chairperson***

This clause sets out the position and role of the Chairperson.

Subclauses (1) and (2) requires the Minister to designate one member of the Board to be the Chairperson and another to be Deputy Chairperson. If the Chairperson is unable to act or no Chairperson is designated, the Deputy Chairperson will act in the Chairperson's place.

Subclause (3) provides if the Deputy Chairperson acts for the Chairperson, no act or omission of the Deputy Chairperson can be questioned on the grounds that the circumstances authorising them to act did not exist or had ceased to exist.

### ***Clause 19 – Term of office***

This clause sets out the terms of office for a Board member.

A member will hold office for the period specified in their instrument of appointment (not exceeding 4 years).

When a member's term of office expires, they are eligible for reappointment. There is no limit on the amount of times a person can be reappointed to the Board.

### ***Clause 20 – Casual vacancies, resignation and removal from office***

This clause provides the circumstances where a Board member's office becomes vacant other than on expiry of their appointment under clause 19 (subject to the operation of clause 21).

Subclause (1) provides the Board member's position becomes vacant if the member:

- Dies, resigns or is removed from office;
- Is a bankrupt or a person whose affairs are under insolvency laws;
- Is convicted of an offence punishable by imprisonment for more than 12 months;
- Is convicted of an offence under clause 36 in relation to a failure to disclose a material personal interest; or
- Is convicted of an offence under clause 67 regarding the misuse of confidential information.

Subclauses (2), (3) and (4) provide a Board member may also resign at any time by providing a written notice to the Minister. If this occurs, the resignation is effective from the day the Minister receives the written notice, or on a day specified in the notice, whichever is later.

Subclause (5) provides the circumstances where the Minister may remove a Board member from the Trust's Board. This includes:

- Neglect of duty;
- Misconduct or incompetence;

- Mental or physical incapacity (not including temporary illness), which impairs the performance of the member's duties; or
- Absence without leave from 3 consecutive meetings of the Board of which the member had notice; or
- For any other reasonable cause.

#### ***Clause 21 – Extension of term of office***

This clause sets out what is to occur if a position on the Board becomes vacant due to the expiry of a Board member's term.

If a Board member's term expires, they are taken to continue to be a Board member until one of the following events occurs:

- (a) Three months have passed;
- (b) The Board member is reappointed by the Minister;
- (c) A new Board member is appointed to the position;
- (d) The Board member resigns under clause 20(2); or
- (e) The Board member is removed from office under clause 20(5).

#### ***Clause 22 – Leave of absence***

This clause provides that the Board can grant a member leave to be absent from a meeting of the Board. This leave can be granted on any terms and conditions the Board thinks appropriate.

#### ***Clause 23 – Alternative Board members***

This clause provides for the appointment of alternative Board members.

Subclause (1) provides if a Board member is unable to act, the Minister may appoint a person to act temporarily in the Board member's place.

Subclause (2) prevents this power from being used in relation to the Chairperson. If a Chairperson is unable to act, the Deputy Chairperson acts in their place (clause 18).

Subclause (3) provides the Minister may appoint an alternative Board member to act temporarily in the Deputy Chairperson's place if the Deputy Chairperson is acting in the Chairperson's place.

Subclause (4) provides an alternative Board member appointed under this clause is taken to be a member and has all the entitlements of a member, provided the person acts in accordance with the conditions of their appointment.

#### ***Clause 24 – Remuneration and allowances***

This clause addresses the remuneration and allowances of Board members.

A Board member is entitled to any remuneration and allowances as determined by the Minister. The Minister must make these determinations on the recommendation of the Public Sector Commissioner.

## **Subdivision 2 – Board meetings**

### ***Clause 25 – Holding meetings***

This clause addresses the holding of meetings by the Board.

Subclauses (1) and (2) require the Chairperson to chair the first Board meeting with an ongoing requirement to hold at least four meetings (as a minimum) annually at a time and place determined by the Board (unless it is a special meeting).

Subclause (3) empowers the Chairperson to convene a special meeting of the Board at any time.

### ***Clause 26 – Quorum***

This clause provides that the quorum for a Board meeting is five members. If less than five members can attend a meeting, the meeting cannot convene or conduct any business.

### ***Clause 27 – Presiding Board member***

This clause addresses the role of the presiding member at Board meetings.

If the Chairperson is present at a Board meeting, they must preside over that meeting. If the Chairperson is not present at a Board meeting, the Deputy Chairperson must preside over the meeting instead.

If both the Chairperson and Deputy Chairperson are absent, the Board members attending the meeting must hold a vote and elect one of their number to preside over the meeting. If they are unable to elect someone, the meeting cannot convene.

### ***Clause 28 – Procedure at meetings***

This clause provides the Board may determine its own meeting procedures subject to any restrictions imposed by the Bill or any Regulations made under the Bill.

### ***Clause 29 – Voting***

This clause addresses how voting is to occur in a Board meeting.

Each Board member, including the presiding member, has a single vote unless they are prevented from voting under clause 37 due to a conflict of interest.

All decisions of the Board must be made by a simple majority vote of all members attending the meeting. In the case of a split vote, the presiding member may exercise a second casting vote to decide the matter.

### ***Clause 30 – Holding meetings remotely***

This clause provides that a Board member is not required to attend a meeting in person if they are able to attend the meeting remotely.

A member can only attend a meeting remotely if they use a means of communication which allows them to be in continual and instantaneous contact with all other people attending the meeting. This would include methods such as phone, internet phone or

video conferencing but would not include methods that are intermittent or delayed, such as email or Short Messaging Service (SMS).

### ***Clause 31 – Resolution without meeting***

This clause provides that a Board decision can occur without a Board meeting.

If a written resolution is assented to in writing by every Board member, it will have the same effect as if it were a decision made at a Board meeting.

This can only be used for unanimous decisions.

### ***Clause 32 – CEO and Department CEO may attend meeting***

This clause provides for the attendance of persons other than Board members at meetings.

Subclause (1) defines an ***authorised person*** to mean:

- (a) The CEO;
- (b) A person who is authorised in writing by the CEO to attend a meeting on behalf of the CEO;
- (c) The CEO of the Department who administers the Bill;
- (d) A person authorised in writing by the Department CEO to attend a meeting on behalf of the Department CEO.

Subclause (2) provides an authorised person may attend meetings of the Board and participate in the Board's deliberations. However, an authorised person is not able to vote on any Board decisions.

Subclause (3) provides the Board with the ability to request the CEO (or their delegate) do not attending a meeting, or part of a meeting.

However, the Board is unable to prevent the Department CEO or their representatives from attending a meeting.

Subclause (4) provides if an authorised person attends a meeting, clauses 30 (remote attendance), 36 (disclosure of material interests), 37 (voting by interested member) and 38 (declaration by Board that clause 37 inapplicable) of the Bill will apply to the authorised person with any necessary modifications.

### ***Clause 33 – Minutes***

This clause provides that the Board must ensure that accurate minutes are kept of the proceedings at each Board meeting.

## **Subdivision 3 - Committees**

### ***Clause 34 – Committees***

This clause provides for the creation and operation of committees.

Subclauses (1) and (2) provides the Board may appoint a committee to investigate or advise the Trust on any aspect of its functions or assist the Trust in the performance

of its functions. A committee may include any number of people, but at least one committee member must be a member of the Board.

Subclause (3) provides the Board a power to give directions to the committee regarding the committee's functions, procedures and reporting requirements. The committee must comply with any direction issued by the Board.

Subclause (4) provides the committee can determine its own procedures, subject to any directions given by the Board and the terms of any delegation under which the committee is acting.

Subclause (6) requires the committee to keep minutes of all committee meetings. The minutes must be kept to a standard approved by the Board and a copy of each set of minutes must be supplied to the Board within the time specified by the Board.

### ***Clause 35 – Remuneration and allowances***

This clause addresses the remuneration and allowances of committee members.

A committee member is entitled to any remuneration and allowances as determined by the Minister. The Minister must make these determinations on the recommendation of the Public Sector Commissioner.

### **Subdivision 4 – Disclosure of interests**

#### ***Clause 36 – Disclosure of material personal interests***

This clause establishes the framework for disclosure of material personal interests (conflict of interest) for Board and committee members.

Subclause (1) requires a Board member who becomes aware that they have a material personal interest in a matter being considered by the Board, to disclose the interest at the next available Board meeting.

A Board member who fails to comply with subclause (1) commits an offence and if convicted, is liable for a fine of up to \$10,000 and will be immediately removed from office under clause 20 of the Bill.

Subclause (2) provides similar rules apply for committee members. However, if a committee member is convicted of an offence under this subclause, they will not automatically be removed from the committee. Any decision to remove a member of a committee is matter for the Board and subject to the rules established by the Board to appoint and remove members from the committee.

Subclause (3) provides if a Board member is acting as a committee member, subclause (2) still applies to them (they must disclose the interest to the committee) even if they have already disclosed the interest at a Board meeting.

A material personal interest may relate to a financial or non-financial matter. What constitutes a material personal interest will vary, depending on the nature and extent of the interest and the nature of the matter at hand.

Any disclosure made under this clause must be recorded in the minutes of the applicable meeting.



### ***Clause 37 – Voting by interested member***

This clause provides what occurs to voting rights of a member in the event the member has a material personal interest.

Subclause (1) prohibits a Board member or committee member who has a material personal interest, from voting on the matter or being present (by any means) at any meeting while the matter is being considered.

Likewise, subclause (2) prohibits the involvement (power to vote or be present) of the Board or committee member, during the deliberations of a resolution to allow a member to participate under clause 38.

### ***Clause 38 – Section 37 may be declared inapplicable***

This clause provides the circumstances in which clause 37 will not apply to a person with a material personal interest (conflict of interest).

Clause 37 will not apply to a Board member or a committee member if:

- (a) The member has disclosed the interest as required by clause 36; and
- (b) The Board or committee passes a resolution which allows the member to participate and vote on the matter.

If a resolution is passed under this clause, it must specify the member, the interest that was disclosed and the matter that is being considered.

The resolution must also include a statement that the members voting for the resolution are satisfied that the interest:

- is trivial or insignificant;
- is unlikely to influence the affected member; and
- it should not disqualify the member from considering or voting on the matter.

### ***Clause 39 – Quorum where section 37 applies***

This clause addresses what happens to the quorum of the Board in the event a member is disqualified from participating due to clause 37.

Subclause (1) provides if any member is disqualified, the quorum of the Board is reduced to four.

Subclause (2) provides if the Board lacks a quorum due to one or more members being disqualified under clause 37, the Minister may deal with the matter.

## **Subdivision 5 – Execution of documents**

### ***Clause 40 – Execution of documents by Trust***

This clause addresses the execution of documents by the Trust.

Subclause (1) provides the Trust must have a common seal. A document will be deemed to be duly executed by the Trust if the document is signed by a person

authorised by the Trust and the common seal is attached in accordance with subclauses (3) and (4).

Subclause (3) provides that the common seal of the Trust is not to be applied to any document except as authorised by the Trust.

Subclause (4) provides that the common seal must be applied to the document in the presence of two Board members, each of whom is to sign the document to attest to the fact that the seal was applied in their presence.

Subclause (5) provides the Trust may in writing under its common seal, authorise one or more people to sign documents on behalf of the Trust, either generally or subject to conditions imposed by the Trust.

Subclauses (6) and (7) provides unless there is evidence to the contrary, a document purporting to be executed by the Trust is presumed to be duly executed in accordance with this clause is presumed to be the common seal of the Trust unless there is evidence to the contrary.

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

### **Subdivision 1 – The CEO**

#### ***Clause 41 – Chief executive officer***

This clause provides for the establishment of the role of Trust CEO.

The Trust must appoint a CEO, whose role will be to administer the day-to-day operations of the Trust subject to the control of the Board.

#### ***Clause 42 – Effect of Trust being SES organisation***

This clause addresses the CEO's status when the Trust is established.

The clause provides that while the Trust is a SES organisation under the *Public Sector Management Act 1994*, the CEO will be the "Chief Executive Officer" for the purposes of that Act, unless section 44(2) of that Act applies in which case the CEO will instead be considered the Trust's "chief employee".

#### ***Clause 43 – Effect of Trust becoming non-SES organisation***

This clause addresses what occurs to the CEO's status if the Trust becomes a non-SES organisation under the *Public Sector Management Act 1994*.

The clause states that if the Trust ever becomes a non-SES organisation under the Act, the CEO will be the Trust's "chief employee".

#### ***Clause 44 – Appointment of CEO***

This clause addresses how the CEO of the Trust is to be appointed.

The clause provides that the appointment of the CEO will depend on whether the Trust is a SES organisation or non-SES organisation.

Subclause (1) provides if the Trust is a SES organisation, the CEO will be appointed and hold office under Part 3 of the *Public Sector Management Act 1994*.

Subclause (2) provides if the Trust is a non-SES organisation, the CEO will be appointed by the Board. The CEO's tenure, salary and conditions of service will also be subject to the provisions in Part 3, Division 2, Subdivision 2 of this Bill.

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

### ***Clause 45 – Application***

This clause provides that if the Trust is a non-SES organisation, clauses 46 to 51 will apply to the CEO.

### ***Clause 46 – Term of office***

This clause provides for the CEO's term of office if the Trust is a non-SES organisation.

The CEO will hold office for a term that is fixed by the instrument of appointment. The term of appointment cannot exceed five years, but there is no limit to the amount of times a person may be reappointed to the role.

### ***Clause 47 – Remuneration and allowances***

This clause provides for the CEO's remuneration and allowances if the Trust is a non-SES organisation.

The CEO's remuneration and allowances will be determined by the Trust on the recommendation of the Public Sector Commissioner with the same leave entitlements as a permanent officer of the Public Service.

### ***Clause 48 – Casual vacancies, resignation and removal from office***

This clause provides for CEO vacancies if the Trust is a non-SES organisation.

Subclause (1) provides that the position will be vacant if the CEO:

- (a) dies, resigns or is removed from office;
- (b) is a bankrupt or their affairs are under insolvency laws;
- (c) is convicted of an offence punishable by imprisonment for more than 12 months; or
- (d) is convicted of an offence under clause 67(1) (disclosure of confidential information)

Subclauses (2), (3) and (4) provides the CEO can resign at any time by giving written notice to the Trust. The resignation will take effect on the day the notice is received by the Trust or the date specified in the notice, whichever is later.

Subclause (5) provides the circumstances where the Trust may remove the CEO from office. This includes:

- Neglect of duty;
- Misconduct or incompetence;
- Mental or physical incapacity (not including temporary illness), which impairs the performance of the member's duties; or
- For any other reasonable cause

### **Clause 49 – Entitlements of public service officer as CEO**

This clause explains what occurs to a person's entitlements if a person serves in the Public Service prior to being appointed to the role of Trust CEO if the Trust is a non-SES organisation.

Subclause (1) provides if a person occupies a position in the Public Service immediately before being appointed as Trust CEO, the person will retain all existing and accruing entitlements as if their service as the CEO is a continuation of service in their previous role.

Subclause (2) provides if a person ceases to be the CEO and is appointed to a role in the Public Service, the time they served as CEO of the Trust, will be regarded as service in the Public Service for the purposes of determining their rights as a public service officer.

### **Clause 50 – Other conditions of service**

This clause provides that subject to Part 3 Division 2 of the Bill, the Trust may on the recommendation of the Public Sector Commissioner, determine any other terms and conditions of service which apply to the role of CEO.

### **Clause 51 – Acting CEO**

This clause provides for the appointment of an acting CEO if the Trust is a non-SES organisation.

Subclauses (1) and (2) provides if the CEO is unable to act or the position of CEO is vacant, the Trust may appoint a person to act as CEO for a continuous period of more than 12 months.

Subclauses (3) and (4) provides if an acting CEO is appointed, they will hold the office on the terms and conditions of appointment determined by the Trust. However, the remuneration of the acting CEO cannot exceed the remuneration of the current CEO (or the previous incumbent if the office is vacant).

Subclause (5) provides if an acting CEO is appointed, an act or omission of that person cannot be questioned merely because the reason for the acting CEO's appointment had not arisen or had ceased.

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

#### **Clause 52 – Other staff of Trust**

This clause provides for the appointment of Trust employees other than the CEO.

Subclause (1) provides the Trust may appoint public service officers to perform its functions under Part 3 of the *Public Sector Management Act 1994*.

Subclause (2) provides the Trust may also appoint other staff who are not public service officers. In that case, the appointment is subject to all applicable laws, awards, orders or industrial agreements under the *Industrial Relations Act 1979*.

Subclause (3) permits the Trust to employ casual staff or engage a person under a contract for services under section 100 of the *Public Sector Management Act 1994*.

Subclause (4) permits the Trust to enter into an agreement to use the services of another person's employee subject to the terms of that agreement.

### ***Clause 53 – Use of government staff and facilities***

This clause provides for the use of State resources by the Trust.

Subclause (1) provides the Trust will be able to enter into an arrangement to make use of any officer or employee in the Public Service, a State agency or otherwise in the service of the State. This arrangement must be made with the relevant employing authority and can be on a full or part time basis.

Subclause (2) provides the Trust will also be able to enter into an arrangement with a department of the Public Services or a State agency to use the facilities of that department or agency.

All arrangements under this clause are to be made on terms agreed to by the parties.

### ***Clause 54 – Agreement to recover costs of casual staff***

This clause provides that if the Trust allows a person to use a Trust venue to conduct an activity, the Trust can recover any costs it incurs on employing staff for the purposes of the Trust venue while it is being used in relation to the activity.

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

### **Division 1 – Accountability provisions**

#### ***Clause 55 – Minister may give directions***

This clause provides for the Ministerial accountability of the Trust.

Subclause (1) provides the Minister with the power to give written directions to the Trust in relation to the performance of its functions that the Trust must follow. These directions can be general in nature or in relation to a specific matter.

Subclauses (2) and (3) provides the text of any directions given by the Minister must be laid before each House of Parliament within 14 days after the day on which the direction is given. Similarly, the text of any direction given must also be included in the Trust's annual report in accordance with Part 5 of the *Financial Management Act 2006*.

#### ***Clause 56 – Minister to be kept informed***

This clause relates to the reporting requirements of the Trust.

The Trust will be required to keep the Minister reasonably informed of the operations, financial performance and financial position of the Trust. This includes information on the Trust's assets, liabilities, profits, losses and prospects of the Trust.

The clause also places a requirement upon the Trust to give the Minister any reports or other information the Minister requires to make an informed judgement on the operations of the Trust.

### **Clause 57 – Minister to have access to information**

This clause provides the Minister with rights to access information held by the Trust.

Subclause (1) provides definitions for the purposes of this clause, including:

**Document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise; and

**Information** means information specified, or of a description specified, by the Minister that relates to the Trust's functions.

Subclauses (2) and (3) provides the Minister with the power to obtain any information in the possession of the Trust and make copies of any document containing that information and the methods the Minister can use to obtain the information.

Subclause (4) requires the Trust to comply with any request made by the Minister under this clause.

### **Clause 58 – Protection for disclosure or compliance with directions**

This clause provides if the Trust or another person performs a function under the Bill, they are not liable for any claim regarding the disclosure of information under a duty imposed by:

- (a) clauses 56, 57 or 65 of the Bill;
- (b) the *Financial Management Act 2006*; or
- (c) the *Auditor General Act 2006*.

## **Division 2 – Financial provisions**

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

This clause provides that the Trust must comply with the administration and reporting requirements of the *Financial Management Act 2006* and is subject to yearly financial audits by the Office of the Auditor-General pursuant to the *Auditor General Act 2006*.

### **Clause 60 – Arts and Culture Trust Account**

This clause provides for the mandatory financial accounts of the Trust.

Subclause (1) provides the "Arts and Culture Trust Account" will be established as an agency special purpose account under section 16 of the *Financial Management Act 2006*.

Subclause (2) provides all money received by the Trust must be credited to the special purpose account and any money paid by the Trust must be charged to that account.

### **Clause 61 – Trust's funds**

This clause relates to the funds of the Trust.

Subclause (1) provides the Trust will only be able to perform functions using funds it has lawfully received or which were lawfully available to it.

Subclause (2) provides if any money is accepted by the Trust on trust or subject to conditions, the Trust must use the money in accordance with the trust or condition.

### ***Clause 62 – Borrowing***

This clause provides for the ability of the Trust to borrow money.

The Trust may with the Treasurer's approval, borrow or re-borrow money and arrange other kinds of financial arrangements.

### ***Clause 63 – Guarantees by Treasurer***

This clause provides for the guarantee of Trust debts by the Government.

Subclause (1) provides if the Trust borrows money under clause 62, the Treasurer will be able to guarantee those loans on behalf of the State.

Subclauses (2), (3) and (4) provides that prior to guaranteeing a Trust debt, the Treasurer can require the Trust to provide appropriate security. The Treasurer can also fix charges on the Trust which must be credited to the Consolidated Account.

### ***Clause 64 – Effect of guarantee***

This clause provides for the payment of guarantees by the Treasurer.

Subclauses (1) and (2) provides if any money is due under a guarantee, the Treasurer will make this payment out of the Consolidated Account.

If such a payment occurs, the Trust will remain liable to the Government for the amount paid under the guarantee. If the Treasurer subsequently receives or recovers money from the Trust, the money will need to be credited to the Consolidated Account to offset the money paid under the guarantee.

### ***Clause 65 – Notice of financial difficulty***

This clause outlines the process to be followed if the Trust discovers that it is in risk of becoming insolvent.

Subclauses (1) and (2) requires the Trust to immediately notify the Minister if the Trust forms the opinion that it is unlikely to meet a financial obligation at the time the financial obligation is legally due to be paid. The notice must be in writing and give the reasons for the Trust's opinion.

If the Minister receives a notice under subclause (1), the Minister must, within seven days, confer with the Trust and the Treasurer to determine what actions are needed to enable the Trust to meet the relevant financial obligations. The Minister may then initiate any of those actions as required.

Subclause (4) provides the Minister with a power to issue directions to the Trust requiring it to cease or limit any of its functions. This power would be used to help bring the Trust's expenditure under control.

The express power in subclause (4) is not intended in any way, to limit the ability of the Minister to issue other directions to the Trust concerning the performance of their functions under clause 55 (Minister may give directions) of the Bill.

## **Part 5 - Miscellaneous**

### ***Clause 66 – Protection from liability for wrongdoing***

This clause addresses the potential liability of people acting on behalf of the Trust.

This clause provides no action or claim for damages will lie against any person for anything the person has done in good faith for the performance of a function under the Bill. This immunity will also apply for any omission or failure to act, provided it occurred in good faith.

This protection applies even if the person does something which they had the power to do even if the Bill hadn't been enacted.

This immunity does not extend to any concurrent liability held by the Trust or the State Government.

### ***Clause 67 – Confidentiality***

This clause addresses the confidentiality of information obtained through the operation of the Arts and Culture Trust.

Subclause (1) provides a person must not directly or indirectly disclose any information which the person obtained via their office, position, employment or engagement by the Arts and Culture Trust or any disclosure made to the person under or for the purposes of the Bill.

If a person fails to comply with subclause (1), they commit an offence and if convicted, is liable for a fine of up to \$10,000.

It is not an offence however, to disclose any information that is already in the public domain or when disclosure is authorised under clause 68 of the Bill.

### ***Clause 68 – Authorised use or disclosure of information***

This clause sets out the situations where it is lawful to use, or release information obtained by the Arts and Culture Trust.

This clause permits the use or disclosure of information if it is done in good faith in the following circumstances:

- For the purposes of a performing a function of the Trust;
- Authorised or required for the purposes of the Bill;
- Released under another law;
- Released to a Court or other person or body in the course of proceedings;
- Released in accordance with a Court order or the order of some other person or body acting judicially;
- Released in any other circumstances prescribed in Regulations.

If information is used or disclosed in any of the above situations:

- No civil or criminal liability will be incurred;



- It will not be regarded as a breach of any duty of confidentiality or secrecy imposed by law;
- It will not be regarded as a breach of any professional ethics, standards or principles of conduct applicable to the person's employment; and
- It will not constitute unprofessional conduct.

***Clause 69 – Laying documents before Parliament not sitting***

This clause provides the process for tabling documents in Parliament in situations where the Parliament is not sitting.

If the Bill requires the Minister to lay a document before a House of Parliament within a certain period and the House is not sitting during that time, the Minister can send the document to the Clerk of a House.

If the Minister sends the document to the Clerk of a House, the document is taken to be laid before the house. The document must then be recorded in the Minutes, or Votes and Proceedings, of the House on the next sitting day after the Clerk receives the document.

***Clause 70 – General regulations***

This clause provides the Governor with the power to make regulations for the purposes of the Bill.

The Governor will have the power to make regulations for any matter required or permitted to be prescribed by the Bill and make regulations for any other matter which is necessary or convenient for giving effect to the purposes of the Bill.

Subclause (2) provides a non-exhaustive list of the kinds of regulations which the Governor can make. This includes:

- Care, control, management, maintenance, development and improvement of Trust venues;
- The use and hiring out of Trust venues;
- The conduct of activities at Trust venues, including in relation to noise levels, lighting and pyrotechnics;
- The times at which a Trust venue, or any part of a Trust venue, is to be open or closed to the public;
- The maintenance of good order at Trust venues;
- The duties and conduct of persons at Trust venues;
- The admission of people, vehicles and animals to Trust venues;
- What may be brought into or onto Trust venues;
- The taking of liquor into or onto, and its consumption at, Trust venues;
- The removal of persons found committing offences or causing annoyance or inconvenience at Trust venues;
- The appointment of authorised persons and their powers in connection with the operation and enforcement of the regulations;

- The reservation of any part of a Trust venue for separate or exclusive use specified in the regulations;
- Private trading at Trust venues or any part of a Trust venue;
- The imposition and payment of fees and charges; and
- The affairs, business and management of the Trust.

These regulations can provide that contravention of the regulations is an offence and punishable by a fine not exceeding \$5000.

### ***Clause 71 – Traffic regulations***

This clause provides the Governor the power to make traffic regulations regarding vehicle use and parking on Trust venues. This power is in addition to the general regulation power in clause 70.

Subclause (1) defines the terms used in this clause.

The term '**Authorised person**' means a person appointed under regulations enacted under clause 70(2)(k).

Subclause (2) provides a power to make regulations to authorise, prohibit, restrict or otherwise regulate parking and vehicle use on Trust venues. This includes restrictions on speed and classes of vehicles on Trust property. It also allows for paid parking on Trust land.

The imposition of parking regulations will require the Trust to have enforcement powers that go beyond fines. This clause will also allow regulations which provide for:

- The removal and impoundment of vehicles;
- The use of speed measuring equipment for evidentiary purposes; and
- The requirement for offenders to provide their name and address when requested by an authorised person.

### ***Clause 72 – Review of the Act***

This clause provides for future reviews of the operation and effectiveness of the Bill.

Subclauses (1) and (2) provides that five years after this clause comes into effect, the Minister must review the operation and effectiveness of the Act as soon as practicable. The review must address:

- The effectiveness of the operations of the Trust;
- Whether the functions of the Trust need to continue; and
- Any other matter the Minister deems relevant to the operation or effectiveness of the Act.

After the initial review, reviews will need to be undertaken every 10 years.

Subclause (3) requires once a review is complete, the Minister must prepare a report and lay it before each House of Parliament as soon as practicable after the report is completed. With the report being tabled no later than one year after the review was due to start.

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

### **Division 1 – Repeals**

#### ***Clause 73 – Repeals***

This clause repeals the *Perth Theatre Trust Act 1979*, as this legislation will serve no further purpose once the Bill is enacted.

### **Division 2 – Consequential amendments**

#### ***Clause 74 – Constitution Acts Amendment Act 1899 amended***

This clause amends Schedule V Part 3 of the *Constitution Acts Amendment Act 1899*.

Schedule V Part 3 of that Act sets out a list of all statutory bodies whose Boards are completely vacated whenever a State election is held. This clause removes the reference to PTT and replaces it with a reference to the Arts and Culture Trust.

#### ***Clause 75 – Financial Management Act 2006 amended***

This clause amends Schedule 1 of the *Financial Management Act 2006*.

Schedule 1 of that Act lists all the statutory authorities that are subject to the *Financial Management Act 2006*. This clause removes the reference to PTT and replaces it with a reference to the Arts and Culture Trust.

This amendment operates in conjunction with clause 59 of the Bill which relates to the Trust's auditing requirements.

#### ***Clause 76 – Public Sector Management Act 1994 amended***

This clause amends Schedule 2 of the *Public Sector Management Act 1994*.

Schedule 2 of that Act sets out all the entities which are Senior Executive Service (SES) organisations for the purposes of the Act. This clause removes the reference to PTT and replaces it with a reference to the Arts and Culture Trust.

#### ***Clause 77 – State Superannuation (Transitional and Consequential Provisions) Act 2000 amended***

This clause deletes section 57 from the *State Superannuation (Transitional and Consequential Provisions) Act 2000*.

Section 57 of that Act contains transitional provisions relating to the superannuation requirements of the PTT. These provisions were never proclaimed and will cease to serve any purpose once the Bill comes into operation and the Perth Theatre Trust is abolished.

### **Clause 78 – Statutory Corporations (Liability of Directors) Act 1996 amended**

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

Schedule 1 of that Act sets out all the organisations to whom the executive officer is deemed a 'director' for the purposes of that Act. This clause deletes the Perth Theatre Trust, as the PTT will be abolished.

## **Part 7 – Transitional and savings provisions**

### **Division 1 – Preliminary**

#### **Clause 79 – Terms used**

This clause defines the terms used in Part 7 of the Bill. The defined terms are:

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

**Asset**

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

(b) includes any money, security, chose in action or document.

**Commencement day** means the day on which section 73 comes into operation;

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

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

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

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

**This Part** includes regulations made under clause 105(2).

### **Clause 80 – Interpretation Act 1984 not affected**

This clause provides that Part 7 of the Bill is in addition to the provisions of the *Interpretation Act 1984* and will not limit or change the operation of the Act in relation to the repeals carried out by section 73 of the Bill unless this intention is clearly expressed by the Bill.

## **Division 2 – Perth Theatre Trust Abolished**

### ***Clause 81 – Perth Theatre Trust abolished***

This clause provides that on commencement day, the PTT is abolished, and all trustees of the PTT go out of office.

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

### ***Clause 82 – Assets, rights and liabilities***

This clause deals with the legal transition of the PTT's role to the Arts and Culture Trust.

On commencement day, all assets and liabilities of the PTT will transfer to the Arts and Culture Trust.

The Arts and Culture Trust will obtain the right to bring or continue any proceedings that might have been brought or continued by the PTT. Any remedy which was available to or could have been held against the PTT will apply to the Arts and Culture Trust instead.

### ***Clause 83 – Perth Theatre Trust Account***

This clause deals with the transition of the PTT's finances to the Arts and Culture Trust.

On commencement day, all money in the PTT Account will be credited to the Arts and Culture Trust. The PTT Account will then be closed as it will serve no further purpose.

The Arts and Culture Trust will be able to use this money for the purposes of the Bill, including the payment of any liabilities held by the PTT.

If any money is payable to the PTT after commencement day, this money will be payable to the Arts and Culture Trust Account instead.

If a contract, agreement, instrument or other document refers to the PTT Account, that reference will be read to refer to the Arts and Culture Trust Account unless the context otherwise requires.

### ***Clause 84 – Investments***

This clause provides for the transition of the PTT's investments.

On commencement day, any money which the PTT authorised to be invested will be treated as if it had been authorised by the Arts and Culture Trust.

The interest from any of the PTT's investments must be credited to the Arts and Culture Trust Special Account. A similar process must occur for any part of the invested money which ceases to be invested.

### **Clause 85 – Reserves**

This clause provides for the transfer of Crown reserves managed by the PTT.

On commencement day, any Crown reserves managed by the PTT will transfer to the management of the Arts and Culture Trust.

Any transfer that occurs under this clause will be treated as if it had been made under the *Land Administration Act 1997*.

### **Clause 86 – Registration of documents**

This clause deals with documents which were registered by the PTT prior to the Bill coming into full operation.

The clause will apply to:

- The Registrar of Titles under the *Transfer of Land Act 1893*;
- The Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*;
- Any other person authorised by a written law to record and give effect to the registration of documents.

These officials will be required to take notice of Part 7 of the Bill. They will be required to record and register in an appropriate manner any documents which are needed to give effect to Part 7 of the Bill.

This clause ensures any person needing to record and give effect to documents for the purposes of Part 7 of the Bill will have the power to do so.

### **Clause 87 – Exemption from State tax**

This clause deals with any State tax liabilities which might be occurred in the process of transferring the PTT's role to the Arts and Culture Trust.

The clause will apply to any duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge imposed by State law.

These liabilities will not be payable in relation to anything that occurs by operation of Part 7 of the Bill or anything done to give effect to that Part.

The Minister will be able to certify in writing that a specified thing done for the purposes for Part 7 qualifies for an exemption under this clause.

A certificate issued by the Minister is proof that an exemption exists unless it is proven otherwise, and this certificate can be relied upon in legal proceedings.

## **Division 4 — Chief Executive officer and staff member of the Perth Theatre Trust**

### **Clause 88 – Chief Executive officer of the Perth Theatre Trust**

This clause provides for the transition of the employment of the General Manager of the PTT to the CEO of the Arts and Culture Trust.

On commencement day, the General Manager of the PTT will cease to be the General Manager of the PTT and will become the CEO of the Arts and Culture Trust.

Subject to the *Public Sector Management Act 1994*, the General Manager of the PTT will be employed as CEO of the Arts and Culture Trust under the same conditions they had in their former role.

Unless the CEO agrees otherwise, the transfer to the new role will not affect:

- Their remuneration;
- Their existing or accruing rights in relation to annual leave, long service leave, personal leave or any other leave;
- Affect any of their rights in relation to superannuation;
- Interrupt their continuity of service.

### **Clause 89 – Other employed staff**

This clause addresses the continuation of employment for the employees of the PTT.

From commencement day, any person employed by the PTT prior to the Bill coming into operation will be taken to be employees of the Arts and Culture Trust under the same terms and conditions as their previous employment. This protection will also apply to casual and fixed term employees.

An employee's obligations and entitlements will remain the same as the ones they had in their former role.

Unless the employee agrees otherwise, the transfer to the new role will not affect:

- Their remuneration;
- Their existing or accruing rights in relation to any leave;
- Affect any of their rights in relation to superannuation;
- Interrupt their continuity of service.

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

### **Clause 90 – Completion of things commenced**

This clause provides that anything that was commenced by the PTT before the Bill comes into operation may be continued by the Arts and Culture Trust as long as it falls within its function to do so.

### **Clause 91 – Continuing effect of things done**

This clause provides for the continuation of anything done by the PTT.

It will apply to any act, matter or thing done or omitted to be done by, to or in respect of the PTT. After commencement day, they will all be deemed to relate to the Arts and Culture Trust.

This clause will not affect the operation of any other provision of Part 7 of the Bill.

### **Clause 92– Contracts, agreements, arrangements and other instruments**

This clause provides that when the Bill commences, any agreement or instrument to which the PTT was a party is taken to continue as if the Arts and Culture Trust were a party.

This clause will also apply to any arrangements between the PTT and the City of Perth under section 19(1) the *Perth Theatre Trust Act 1979*.

### **Clause 93 – Business arrangements**

This clause provides for the transition of business arrangements from the PTT and the Arts and Culture Trust.

All existing business arrangements will continue under the new Trust under the same terms and conditions.

If a business arrangement was approved by the Minister under the *Perth Theatre Trust Act 1979*, it will be taken as if it had received the Minister's approval under clause 13(1) of the Bill.

Likewise, if a business arrangement was exempt from needing Ministerial approval under the *Perth Theatre Trust Act 1979*, it will be taken as if it had received an exemption under clause 13(2) of the Bill.

### **Clause 94 – Declarations of Theatres under s.3(2) of repealed Act**

This clause provides for the handover of theatres formerly managed by the PTT.

From commencement day, any building or structure declared to be a theatre under section 3(4) of the *Perth Theatre Trust Act 1979* will be treated as if they were declared as a venue under clause 4 of the Bill.

This ensures all theatres managed by the PTT will transfer seamlessly to the management of the Arts and Culture Trust.

## **Division 6 – Other transitional provisions**

### **Clause 95 – Transitional regulations**

This clause provides the Governor with the power to make any regulations which might be needed to facilitate the transition between the PTT and the Arts and Culture Trust.



Subclause (1) defines the terms used in this clause. The defined terms are:

**Publication day** means the day on which the transitional regulations are published in the Government Gazette.

**Specified** means specified or described in the regulations; and

**Transitional matter**

(a) Means a matter of a transitional nature that arises as a result of Part 6 of the Bill or the repeal of the *Perth Theatre Trust Act 1979*; and

(b) Includes a saving or application matter.

Subclause (2) provides if the Bill does not sufficiently provide for a transitional matter, the Governor may make regulations which prescribe all matters that are necessary or convenient to deal with the transitional matter.

Subclauses (3) and (4) provides regulations made under this clause can exempt a specified matter from a written law or modify how a written law applies to that matter.

If regulations made under this clause state that a specified state of affairs is taken to exist or not exist from a specified day, then it is taken to do so.

Subclause (5) of this clause provides that regulations enacted under this clause will not operate to the extent that it:

(a) Prejudicially affects the rights of a person existing prior to the regulations being published; or

(b) Imposes a liability on a person in respect to anything done or omitted to be done prior to the regulations being published.

The limitation in subclause (5) only applies to the rights or liabilities of a person, it does not apply to the State or an authority of the State.

### **Clause 96 – Savings**

This clause provides general savings regarding the operation of Part 7 of the Bill.

Any operation of Part 7 will not to be regarded as:

- A breach of contract, confidence or any other civil wrong;
- A breach of any contractual provisions which prohibit, restrict or regulate the assignment or transfer of assets, rights or liabilities or the disclosure of information;
- Giving rise to any right to damages or compensation;
- Giving rise to any remedy by a party to an instrument or causing or permitting the termination of any instrument because of a change in the beneficial or legal ownership of any asset, right or liability;
- Causing any contract or instrument to be void or unenforceable; or
- Releasing or allowing the release of any surety.