

Culture, Libraries and the Arts Bill 1998

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Western Australia

LEGISLATIVE ASSEMBLY

Culture, Libraries and the Arts Bill 1998

A Bill for

**An Act to constitute the Minister for the Arts as a body corporate, to
establish the Libraries Council of Western Australia and His
Majesty's Performing Arts Foundation, to provide for the
5 preservation of certain publications, and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Culture, Libraries and the Arts Act 1998*.

5 **2. Commencement**

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Objects

The objects of this Act include the following —

- 10 (a) to promote the development of culture and the arts in the State and an environment in which that development can take place;
- 15 (b) to provide for the acquisition, preservation and display of materials relating to the cultural, documentary, literary and artistic heritage and natural history of the State;
- (c) to provide the public with access to culture and the arts;
- 20 (d) to promote and facilitate the provision of an integrated system of public library and information services in the State; and
- (e) to provide for the preservation of certain publications.

4. Definitions

In this Act, unless the contrary intention appears —

25 **“advisory body”** means the Art Gallery Advisory Board, the Libraries Council or the Museum Council;

“Art Gallery Advisory Board” means the body established by section 5 of the *Art Gallery Act 1959*;

“**Arts Acts**” means this Act, the *Art Gallery Act 1959* and the *Museum Act 1969*;

“**Corporate Minister**” means the body corporate established by section 6;

5 “**department**” means the department referred to in section 19;

“**gift**” includes gift by will;

“**Libraries Council**” means the Libraries Council of Western Australia established by section 27;

10 “**library**” does not include a library operated in the private sector for profit;

“**library and information services**” does not include library and information services provided in the private sector for profit;

15 “**LISWA**” means the library and information service operated by the department under the name “the Library and Information Service of Western Australia”;

“**Museum Council**” means the body established by section 7 of the *Museum Act 1969*;

20 “**participating body**” means a local government, or a body that is, or that is a member of a class that is, prescribed for the purposes of this definition;

“**public library**” means a library established under an agreement entered into by the Corporate Minister with a participating body under section 9(3);

25 “**State Librarian**” means the person referred to in section 25;

“**Western Australian Municipal Association**” means the body corporate constituted under section 9.58 of the *Local Government Act 1995*.

Part 2 — Administration

Division 1 — The Corporate Minister

5. Definitions

In this Division —

5 **“property”** means property of every kind, whether real or personal, tangible or intangible, corporeal or incorporeal, and any interest in property;

“the common seal” means the common seal of the Corporate Minister.

10 **6. Minister to be a body corporate**

(1) For the purposes of the Arts Acts, the Minister —

(a) is a body corporate with perpetual succession and is to have a common seal; and

(b) may sue and be sued in the Corporate Minister’s name.

15 (2) The name of the Corporate Minister is to be the designation that is, from time to time, conferred on the Minister by the Governor under the *Constitution Acts Amendment Act 1899*.

(3) All courts, judges and persons acting judicially are to take notice of the common seal affixed to any document and are to
20 presume that it was duly affixed.

(4) The Corporate Minister may, by writing under the common seal, authorize the chief executive officer, either generally or in respect of a specified matter or specified matters, to execute deeds or other instruments on its behalf.

- (5) A deed or other instrument executed by the chief executive officer on behalf of the Corporate Minister binds the Corporate Minister and has the same effect as if it were under the common seal.

5 **7. Property vested in the Corporate Minister**

Property acquired or held for the purposes of the Arts Acts is vested in the Corporate Minister.

8. Functions of the Corporate Minister

The functions of the Corporate Minister are —

- 10 (a) to promote and further the objects of this Act;
- (b) to consult with, and ask for and receive advice from, the Art Gallery Advisory Board, the Libraries Council and the Museum Council;
- 15 (c) to acquire, hold, protect, preserve, display and dispose of materials and collections of materials relating to the cultural, documentary, literary and artistic heritage and natural history of the State;
- (d) to turn to account any resource or intellectual property that is vested in the Corporate Minister;
- 20 (e) to use the knowledge, expertise and resources of the department to provide consultative, advisory or other services;
- (f) to apply for, hold, exploit and dispose of any patent, patent rights, design rights, copyright or similar rights;
- 25 and
- (g) to perform any other function conferred on the Corporate Minister by the Arts Acts.

9. Certain functions of the Corporate Minister in relation to library materials, public libraries, etc.

(1) The Corporate Minister —

- 5 (a) is to establish, maintain and expand collections of library materials and, in particular, a comprehensive collection of library materials that are of Western Australian origin or otherwise have a special relevance to the State and is to promote those collections to the public for the purposes of providing information, education and entertainment;
- 10 (b) is to ensure that, as far as practicable, the public has free access to library materials and to information stored in libraries and other institutions in which information is stored and made publicly available, both within and outside the State; and
- 15 (c) is to ensure that library and information services are available to help meet the needs of the public for access to information.
- 20 (2) The Corporate Minister is to enter into an agreement with the Western Australian Municipal Association for the purpose of establishing the principles that are to govern any agreement referred to in subsection (3) that the Corporate Minister enters into with a local government.
- 25 (3) The Corporate Minister may enter into an agreement with a participating body for the purpose of establishing, promoting, organizing, registering or supervising public libraries.

10. Corporate Minister to direct advisory boards to give advice before performing certain functions

(1) In this section —

5 “**Art Gallery**” has the meaning given in section 4 of the *Art Gallery Act 1959*;

“**Museum**” has the meaning given in section 6 of the *Museum Act 1969*.

(2) Before the Corporate Minister performs any function —

(a) that relates to the Art Gallery; and

10 (b) that is a prescribed function or a function of a prescribed class,

the Corporate Minister is to direct the Art Gallery Board to give written advice on the performance of the function to the Corporate Minister.

15 (3) Before the Corporate Minister performs any function —

(a) that relates to the Museum; and

(b) that is a prescribed function or a function of a prescribed class,

20 the Corporate Minister is to direct the Museum Council to give written advice on the performance of the function to the Corporate Minister.

(4) Before the Corporate Minister performs any function —

(a) that relates to public libraries or library or information services; and

- (b) that is a prescribed function or a function of a prescribed class,

the Corporate Minister is to direct the Libraries Council to give written advice on the performance of the function to the Corporate Minister.

5

- (5) An advisory body is to comply with a direction given to the advisory body under this section.

- (6) Nothing in this section, section 11 or section 12 limits the matters on which or the manner in which —

10

- (a) the Corporate Minister may ask for advice from an advisory body; or

- (b) an advisory body may give advice to the Corporate Minister.

11. Directions from Corporate Minister to advisory body to reconsider advice

15

- (1) The Corporate Minister —

- (a) before performing a function otherwise than in accordance with advice given to the Corporate Minister by an advisory body for the purposes of section 10, is to direct the advisory body; and

20

- (b) at any time when the Corporate Minister considers that such advice should be reconsidered, may direct the advisory body,

to reconsider the advice, either generally or by reference to matters specified in the direction.

25

- (2) An advisory body is to comply with a direction given to the advisory body under subsection (1) and is to give to the Corporate Minister —
- 5 (a) written confirmation of the advice in relation to which the direction was given; or
- (b) revised written advice.
- (3) If the Corporate Minister performs a function otherwise than in accordance with advice confirmed or revised under subsection (2), the Minister is to cause a copy of the text of the
- 10 advice to be laid before each House of Parliament as soon as practicable after the Corporate Minister has performed the function.

12. Corporate Minister may direct advisory bodies to give policy advice

- 15 (1) The Corporate Minister may direct an advisory body to give advice on the formulation of a policy relating to the performance of a function of the Corporate Minister, and the advisory body is to comply with the direction.
- 20 (2) The Corporate Minister may formulate a policy in accordance with advice given by the advisory body or otherwise than in accordance with that advice.
- (3) The Corporate Minister may vary or revoke a policy formulated under subsection (2).
- 25 (4) Subsections (1) and (2) apply, with any necessary changes, to the variation or revocation of a policy in the same way as they apply to the formulation of a policy.

13. Chief executive officer to give effect to policies of Corporate Minister

5 If the Corporate Minister informs the chief executive officer in writing of a policy formulated, varied or revoked by the Corporate Minister under section 12, the chief executive officer is to give effect to the policy, or to the variation or revocation of the policy, as if directed by the Minister to do so.

14. Powers of the Corporate Minister

10 (1) The Corporate Minister may do all things necessary or convenient to be done for or in connection with the performance of the Corporate Minister's functions.

(2) Without limiting subsection (1), and subject to section 10, the Corporate Minister may for the purposes of performing any function —

15 (a) acquire, hold, manage, improve, develop and dispose of property or an interest in property;

(b) accept any unconditional gift or any gift subject to conditions to which the Corporate Minister agrees;

20 (c) subject to section 15, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement;

(d) enter into any contract, agreement or arrangement;

25 (e) fix and collect fees, charges or other payments for or in respect of the provision of services or the performance of work by the department; and

(f) do anything incidental to any of the Corporate Minister's powers.

(3) In exercising any power under this section the Corporate Minister may act in conjunction with —

(a) any person or firm or any public authority; or

(b) any local government, any department of the Public Service or any agency of the State or the Commonwealth.

(4) In subsection (2) —

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

“business arrangement” means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

“dispose of” includes dispose of by way of lease or in any other manner in which property or an interest in property may be disposed of;

“participate” includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

15. Exercise of powers under section 14(2)(c)

(1) Subject to subsection (3), the Corporate Minister may only exercise a power under section 14(2)(c) with the written approval of the Treasurer.

(2) The approval of the Treasurer may be subject to any terms and conditions specified in the approval.

- (3) Subsection (1) does not apply to the exercise of a power by the Corporate Minister if —
- 5 (a) the Treasurer has given written notice to the Corporate Minister that powers of a particular class, or to be exercised in particular circumstances, do not require the Treasurer's approval; and
- (b) that notice applies to the power to be exercised.
- (4) The Treasurer may give written directions to be complied with generally by the Corporate Minister in the exercise of a power referred to in subsection (1).
- 10

16. Delegation

- (1) The Corporate Minister may, in writing, delegate to the chief executive officer the performance of any of the Corporate Minister's functions under the Arts Acts.
- 15 (2) A delegation may be general or as otherwise provided in the instrument of delegation.
- (3) Performance of a function of the Corporate Minister by the chief executive officer —
- 20 (a) is to be taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
- (b) is to be treated as performance by the Corporate Minister.
- (4) The chief executive officer is subject to the direction and control of the Corporate Minister in the performance of a function delegated to the chief executive officer under this section.
- 25

17. Subdelegation

- 5 (1) The Corporate Minister may, in an instrument by which a function is delegated to the chief executive officer under section 16, authorize the chief executive officer to subdelegate that function to —
- (a) a specified officer of the department; or
- (b) the holder or holders for the time being of a specified office, or class of office, within the department.
- 10 (2) Apart from subsection (1), a delegation under section 16 does not include the power to subdelegate.
- (3) A person to whom a function is subdelegated under this section remains subject to the direction and control of the chief executive officer.
- 15 (4) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under this section in the same way as they apply to a delegation.

18. Application of *Financial Administration and Audit Act 1985*

Any acts or things done by the Corporate Minister under this Division are to be regarded as —

- 20 (a) services under the control of the department for the purposes of section 52 of the *Financial Administration and Audit Act 1985*; and
- (b) part of the operations of the department for the purposes of Division 13 of Part II of that Act.

Division 2 — The department

19. Department

5 There is to be a department of the Public Service with a function of principally assisting the Minister in the administration of the Arts Acts.

20. Department may use certain names

- (1) In performing any of its operations, the department may use, and operate under, the following names —
- 10 (a) ArtsWA;
 - (b) the Art Gallery of Western Australia;
 - (c) the Library and Information Service of Western Australia (or the abbreviation “LISWA”);
 - (d) the Perth Theatre Trust;
 - (e) the Western Australian Museum.
- 15 (2) Subsection (1) does not limit section 35 of the *Public Sector Management Act 1994*.

21. Delegation by chief executive officer

- (1) The chief executive officer may, in writing, delegate to —
- 20 (a) a specified officer of the department; or
 - (b) the holder or holders for the time being of a specified office, or class of office, within the department,
- the performance of any of the chief executive officer’s functions under the Arts Acts except this power of delegation.
- (2) A delegation may be general or as otherwise provided in the
- 25 instrument of delegation.

- (3) Performance of a function of the chief executive officer by an officer —
- 5 (a) is to be taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
- (b) is to be treated as performance by the chief executive officer.
- (4) A person to whom a function is delegated under this section
- 10 remains subject to the direction and control of the chief executive officer.

Division 3 — Staff employed in the department

22. Definition

In this Division —

“**other officers**” means officers referred to in section 23(1)(b).

15 **23. Categories of staff**

- (1) To enable the operations of the department to be performed, persons may be employed in the department —
- 20 (a) as public service officers appointed or made available under Part 3 of the *Public Sector Management Act 1994*;
- (b) as other officers; or
- (c) as wages staff.
- (2) Subsection (1) does not affect the power of the chief executive officer to engage a person under a contract for services under section 100 of the *Public Sector Management Act 1994*.

24. Provisions applicable to other officers and wages staff

- (1) Part 3 of the *Public Sector Management Act 1994* does not apply to other officers or wages staff.
- 5 (2) The power to engage and manage other officers and wages staff is vested in the chief executive officer.
- (3) The power conferred by subsection (2) includes powers to determine remuneration and other terms and conditions of employment of other officers and wages staff, to remove, suspend and discipline other officers and wages staff and to terminate the employment of other officers and wages staff.
- 10 (4) The remuneration of, and other terms and conditions of employment of, other officers and wages staff are not to be less favourable than is provided for in —
- 15 (a) an applicable industrial award, order or agreement under the *Industrial Relations Act 1979*; or
- (b) the *Minimum Conditions of Employment Act 1993*.
- (5) Nothing in this section affects the operation of the *Workplace Agreements Act 1993*.

Division 4 — State Librarian

20 **25. State Librarian, and savings**

- (1) A qualified librarian is to be employed in accordance with section 23 as the State Librarian.
- (2) The State Librarian is to manage LISWA and is to be the principal executive officer of the Libraries Council.

- 5 (3) Despite this section, the person appointed and holding office as State Librarian under section 6 of the *Library Board of Western Australia Act 1951* immediately before the commencement of this section continues, subject to this Act, to hold office for the remainder of the period for which he or she was appointed.

Part 3 — The Libraries Council of Western Australia

Division 1 — Preliminary

26. Definition

In this Part —

5 **“member”** means a member of the Libraries Council.

Division 2 — Establishment and constitution of Libraries Council of Western Australia

27. Libraries Council of Western Australia established

10 A body called the Libraries Council of Western Australia is established.

28. Members of Libraries Council

(1) The Libraries Council is to consist of 7 persons appointed by the Minister as follows —

- 15 (a) 3 persons who, in the Minister’s opinion, have expertise or experience in local government, having been selected from 9 persons nominated to the Minister by the Western Australian Municipal Association;
- 20 (b) 3 persons who, in the Minister’s opinion, are representative of the public and have expertise or experience relevant to the functions of the Libraries Council; and
- (c) a chairman who, in the Minister’s opinion, is a person with standing in the community and an interest in promoting public libraries.

- (2) If insufficient nominations are given to the Minister for the purposes of subsection (1)(a), the Minister may make the necessary appointments at his or her discretion.
- 5 (3) Before making an appointment under subsection (1)(c), the Minister is to consult with the president of the Western Australian Municipal Association.
- 10 (4) The person appointed chairman under subsection (1)(c) is not to be employed in the Public Service or in local government, and the Minister is to terminate the person's appointment if the person becomes so employed and does not resign from the office of chairman.
- (5) The Minister may appoint one of the members appointed under subsection (1)(a) or (b) to be deputy chairman of the Libraries Council.
- 15 (6) If no appointment is made by the Minister under subsection (5), the Libraries Council is to elect one of its members to be deputy chairman.

29. State Librarian may attend Libraries Council meetings

20 The person for the time being holding or acting in the office of State Librarian may attend any meeting of the Libraries Council but is not entitled to vote.

**30. Constitution and proceedings of Libraries Council —
Schedule 1**

- (1) Schedule 1 has effect.
- 25 (2) Subject to this Part, the Libraries Council is to determine its own procedures.

31. Remuneration and allowances

5 (1) A member is to be paid any remuneration and travelling and other allowances that the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.

(2) In subsection (1) —
 “**member**” includes a member of a committee of the Libraries Council appointed under clause 15 of Schedule 1.

32. Libraries Council to be provided with support services

10 The chief executive officer is to provide the Libraries Council with any support services that the Libraries Council may reasonably require.

Division 3 — Functions and powers

33. Functions of Libraries Council

- 15 (1) The functions of the Libraries Council are —
- 20 (a) to formulate policies and give advice to the Corporate Minister on acquiring, holding, protecting, preserving, displaying and disposing of library materials and collections of library materials and, in particular, a comprehensive collection of library materials that are of Western Australian origin or otherwise have a special relevance to the State;
 - 25 (b) to formulate policies and standards for the provision to the public of library and information services and to monitor compliance with those policies and standards;
 - (c) to promote and encourage the continuing provision to the public of free public library services;

- 5 (d) to give advice and make recommendations to the Minister, the Corporate Minister, participating bodies and, with the approval of the Minister, other persons or bodies on all matters in relation to public libraries and library and information services provided by public libraries, including matters of policy and administration;
- (e) to promote a coordinated system of library and information services that satisfies the needs of the public;
- 10 (f) to monitor and evaluate developments in matters relevant to libraries;
- (g) to undertake, collaborate in or procure research, studies or planning in relation to the future needs and future development of library and information services; and
- 15 (h) to consult with participating bodies and other community bodies on matters relevant to libraries.
- (2) Before giving advice or making recommendations to the Minister or the Corporate Minister on a matter, the Libraries Council is to undertake any public consultation in relation to the matter that it considers appropriate.
- 20

34. Powers of Libraries Council

The Libraries Council may do all things necessary or convenient to be done for or in connection with the performance of its functions.

25 **Division 4 — Miscellaneous**

35. Minister may give directions

- (1) The Minister may give directions in writing to the Libraries Council with respect to the performance of its functions or the exercise of its powers, either generally or in relation to a

particular matter, and the Libraries Council is to give effect to any such direction.

- 5 (2) The text of a direction given under subsection (1) is to be included in the annual report of the Libraries Council under section 36.

36. Annual report of Libraries Council

- 10 (1) Despite the *Financial Administration and Audit Act 1985*, the Libraries Council, as soon as practicable after 1 January in each year, is to prepare and give to the Minister a report on its operations and proceedings during the 12 months ending on the preceding 31 December.

- (2) The Minister is to cause the report —
- 15 (a) to be laid before each House of Parliament as soon as practicable after the Minister has received it; and
- (b) to be published in any manner that the Minister thinks fit.

Part 4 — Preservation of Publications

37. Definitions

In this Part —

“publication” means —

- 5 (a) a book, or a part or division of a book;
- (b) a newspaper, magazine, journal or pamphlet;
- (c) a map, plan, chart or table;
- (d) printed music;
- 10 (e) a film, tape, disc or other device or medium on which
 visual images are, or sound or information is, stored
 and capable of being reproduced; or
- (f) anything prescribed to be a publication for the
 purposes of this definition;

15 **“specified”**, in relation to a notice under section 44(1), means
 specified in the notice.

38. Application of this Part

- (1) This Part applies to a publication published on or after
9 December 1994.
- 20 (2) For the purposes of section 39(1), a publication to which this
Part applies published before the day on which this Part comes
into operation is to be taken to have been published on that day.

39. Corporate Minister to be given copy of publications published in Western Australia

- 25 (1) Subject to subsection (2), a person who publishes a publication
in the State to the general public must, at the person’s own
expense and within one month after publication, give a copy of

s. 40

the publication to the Corporate Minister in accordance with guidelines issued by the chief executive officer.

Penalty: \$10 000.

5 (2) Subsection (1) does not apply to an edition of a publication that does not differ from a former edition of that publication, a copy of which has been given to the Corporate Minister under that subsection.

10 (3) If a court convicts a person of an offence under subsection (1), the court, in addition to any penalty imposed or other order made in relation to the offence, is to order the person to give to the Corporate Minister the publication in question, if the person has not already done so, in accordance with any directions the court thinks fit to give and specifies in the order.

40. Publication to include normal containers, wrapping, etc.

15 A publication given to the Corporate Minister under section 39 is to include any container, wrapping material, notices, instructions or other material that would normally accompany the publication.

41. Receipt to be given

20 (1) The chief executive officer is to give a receipt for a publication given to the Corporate Minister under section 39.

 (2) It is enough if a receipt is given once a year for copies of a periodical publication.

42. Copy to be of best quality

25 A reference in section 39 to a copy of a publication is, if the publication is published in various forms of differing quality, a reference to a copy of the publication of the best quality.

43. Publication becomes property of Corporate Minister

A publication given to the Corporate Minister under section 39 becomes the property of the Corporate Minister and may be dealt with as the Corporate Minister thinks fit.

5 **44. Exemptions**

(1) The Minister may by notice published in the *Gazette*—

(a) exempt a specified publication or publications of a specified class from the definition of “publication” in section 37; or

10 (b) exempt a specified person or persons of a specified class from complying with section 39(1).

(2) Without limiting subsection (1), the Minister is to grant an exemption under that subsection if, in the Minister’s opinion, it would be unreasonable or impracticable for section 39(1) to be
15 complied with in relation to a specified past publication or past publications of a specified class.

(3) In subsection (2) —

“**past publication**” means a publication referred to in section 38(2).

Part 5 — His Majesty's Theatre Performing Arts Foundation

45. Definitions

In this Part —

- 5 **“Foundation”** means His Majesty's Theatre Performing Arts Foundation established by section 46;
- “Fund”** means His Majesty's Theatre Performing Arts Foundation Fund referred to in section 49;
- 10 **“His Majesty's Theatre”** means the theatre operated under that name by the department;
- “rules”** means the rules made by the Minister under section 51.

46. Establishment of His Majesty's Theatre Performing Arts Foundation

- 15 (1) A body corporate called His Majesty's Theatre Performing Arts Foundation is established.
- (2) The Foundation —
- (a) has perpetual succession and is to have a common seal; and
- (b) may sue and be sued.

47. Governing council

The Foundation is to have a council that, subject to this Part, is to be the governing body of the Foundation.

48. Functions and powers of the Foundation

- (1) The functions of the Foundation are —
- (a) to attract and retain for His Majesty's Theatre and the performing arts in general in the State continuing public interest and financial support;
 - (b) to encourage gifts to maintain, improve and develop —
 - (i) the services and facilities provided by His Majesty's Theatre; and
 - (ii) the performing arts in general in the State;and
 - (c) to give directions or make recommendations to the chief executive officer as to the manner in which moneys standing to the credit of the Fund are to be applied for the benefit of His Majesty's Theatre and the performing arts in general in the State.
- (2) The Foundation may accept a gift if it is absolute or if it is —
- (a) subject to conditions; or
 - (b) for the purpose of benefiting anything,
- and complying with those conditions, or conferring that benefit, is within the functions of the Foundation.
- (3) The Foundation may do all things necessary or convenient to be done for or in connection with the performance of its functions.

49. Financial arrangements

- (1) There is to be a trust account to be known as His Majesty's Theatre Performing Arts Foundation Fund at the Treasury, forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*.

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- (2) Funds received by the Foundation from the performance of its functions are to be credited to the Fund.
- (3) Any expenditure lawfully incurred by the Foundation in the performance of its functions is to be charged to and paid out of the Fund.
- (4) Subject to subsection (5), moneys standing to the credit of the Fund are subject to the direction and control of the chief executive officer and may be applied for the purposes of carrying this Act into effect or otherwise applied for the purposes of His Majesty's Theatre and the performing arts in general in the State.
- (5) In determining the manner in which moneys standing to the credit of the Fund are to be applied, the chief executive officer —
- (a) is to ensure that those moneys are applied —
- (i) in accordance with any conditions subject to which; or
- (ii) for the purpose of benefiting anything for the benefit of which, those moneys were received by the Foundation;
- (b) is to give effect to any directions given by the Foundation under paragraph (c) of section 48(1); and
- (c) is to take into account any recommendations made by the Foundation under that paragraph.

50. Application of *Financial Administration and Audit Act 1985*

The operation of the Fund is to be regarded as —

- (a) a service under the control of the department for the purposes of section 52 of the *Financial Administration and Audit Act 1985*; and

- (b) part of the operations of the department for the purposes of Division 13 of Part II of that Act.

51. Rules

- 5 (1) The Minister may, on the recommendation of the chief executive officer, make rules that are necessary or convenient for giving effect to this Part.
- (2) Without limiting subsection (1), the rules may —
 - 10 (a) provide for the appointment, constitution, functions and proceedings of the council, including power to employ persons, appoint agents, obtain professional or other services and do all things necessary or convenient to be done for or in connection with the performance by the Foundation of its functions;
 - 15 (b) provide for membership of the Foundation, including membership of different categories having different privileges;
 - (c) provide for meetings and other proceedings of members of the Foundation;
 - 20 (d) provide for the appointment of one or more patrons of the Foundation;
 - (e) provide for Friends of the Foundation and for the establishment of a register of such persons;
 - (f) provide for the manner of execution of documents authorized to be executed by resolution of the council;
25 and
 - (g) empower the council, with the approval of the Minister, to make by-laws with respect to the operations and proceedings of the Foundation, the council, committees of the council and persons employed by the Foundation.

Part 6 — Miscellaneous

52. Protection from liability for wrongdoing

- 5 (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under the Arts Acts.
- (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 the Arts Acts had been enacted.
- 10 (3) Despite subsection (1), the Crown is not 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 the omission to do anything.

15 **53. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted to be prescribed by this Act, or are necessary or convenient to be prescribed for carrying out or giving effect to the purposes of this Act.
- 20 (2) Without limiting subsection (1), the regulations may create offences and provide for a penalty not exceeding \$2 000.

54. Review of Arts Acts

- (1) The Minister is to carry out a review of the operation and effectiveness of the Arts Acts not later than 5 years after the commencement of this Part.
- 25

- (2) In the course of that review the Minister is to consider and have regard to —
- (a) the attainment of the objects of this Act;
 - 5 (b) the effectiveness of the operations of the Art Gallery Advisory Board, the Libraries Council, the Museum Council and the Foundations; and
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of the Arts Acts.
- 10 (3) The Minister is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause it to be laid before each House of Parliament.
- (4) In subsection (2) —
- “the Foundations”** means —
- 15 (a) His Majesty’s Theatre Performing Arts Foundation established by section 46;
 - (b) The Art Gallery of Western Australia Foundation established by section 28A of the *Art Gallery Act 1959*; and
 - 20 (c) the Museum, Science and Humanities Foundation established by section 45B of the *Museum Act 1969*.

55. Transitional provisions — Schedule 2

Schedule 2 has effect.

Schedule 1 — The Libraries Council of Western Australia

[s. 30]

1. Definition

In this Schedule —

5 **“member”** means a member of the Libraries Council.

2. Term of office

(1) Subject to subclause (2) and clause 3, a member holds office for the term, not exceeding 3 years, specified in the member’s instrument of appointment, and is eligible for reappointment for not more than 2
10 further terms of office.

(2) A member whose term of office expires by the passage of time continues in office until that member is reappointed or the successor of that member comes into office.

3. Vacation of office

15 (1) The office of a member becomes vacant if —

- (a) the member resigns by written notice addressed to the Minister;
- (b) the member is an insolvent under administration, as that expression is defined in the Corporations Law;
- 20 (c) the member is convicted of an indictable offence; or
- (d) the appointment of the member is terminated under subclause (2).

(2) The Minister may terminate the appointment of a member if the Minister is satisfied that the member —

- 25 (a) has neglected his or her duty;
- (b) has misbehaved;

- (c) is incompetent; or
- (d) is suffering from mental or physical incapacity impairing the performance of his or her functions under this Act.

4. Leave of absence

5 The Libraries Council may grant leave of absence to a member on any terms and conditions that it thinks fit.

5. Chairman unable to act

10 If the chairman is unable to act by reason of illness, absence or other cause, or during any vacancy in that office, the deputy chairman is to perform the functions of the chairman.

6. Member unable to act

15 (1) If a member other than the chairman is unable to act by reason of illness, absence or other cause, the Minister may appoint another person to act temporarily in his or her place and, while so acting according to the tenor of his or her appointment, that other person is to be taken to be a member of the Libraries Council.

(2) If a member is performing the functions of the chairman under clause 9(2), the Minister may appoint another person under subclause (1) to act in his or her place as a member.

20 (3) The appointment of a person under subclause (1) may be terminated at any time by the Minister.

7. Saving

25 No act or omission of a person acting in place of another under clause 6 or 9(2) is to be questioned on the ground that the occasion for his or her appointment or acting had not arisen or had ceased.

8. Calling of meetings

(1) Subject to this clause, meetings of the Libraries Council are to be held at the times and places that the Libraries Council determines.

(2) A special meeting of the Libraries Council may at any time be convened by the chairman.

(3) The first meeting of the Libraries Council is to be convened by the chairman.

5 **9. Presiding officer**

(1) The chairman is to preside at any meeting of the Libraries Council at which he or she is present.

10 (2) If neither the chairman nor the deputy chairman is present at a meeting, the members present are to elect one of those members to preside at the meeting.

10. Quorum

A quorum for a meeting of the Libraries Council is 4 members.

11. Voting

15 (1) At any meeting of the Libraries Council each member present has a deliberative vote.

(2) Subject to subclause (3), if the votes cast on a question are equally divided, the question remains unresolved until a subsequent meeting of the Libraries Council.

20 (3) If the votes cast on a question at a meeting of the Libraries Council were equally divided and the votes cast on the question at a subsequent meeting of the Libraries Council are again equally divided, the question is to be taken to have been resolved in the negative.

12. Minutes

25 (1) The Libraries Council is to cause accurate minutes to be kept of the proceedings at its meetings and is to submit to the Minister as soon as practicable a copy of the confirmed minutes of each meeting.

- (2) The Libraries Council is to make available to the public in a manner approved by the Minister the confirmed minutes of its meetings unless the Libraries Council resolves not to do so in respect of a particular meeting or a particular matter considered at a meeting.
- 5 (3) If the Libraries Council passes a resolution under subclause (2) in respect of a particular matter considered at a meeting, the Libraries Council is to comply with the requirement in that subclause to make available to the public the confirmed minutes of the meeting, but any references in those minutes to the particular matter may be deleted.
- 10 (4) In this clause —
“**confirmed**” means confirmed at a meeting of the Libraries Council.

13. Resolution without meeting

A resolution in writing signed or assented to by each member by letter or facsimile is as effectual as if it had been passed at a meeting of the Libraries Council.

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14. Holding meetings remotely

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

20

15. Committees

- (1) The Libraries Council may appoint committees to assist it in the performance of its functions and may discharge or alter any committee so appointed.
- 25 (2) A committee may include persons who are not members of the Libraries Council but, unless the Minister approves otherwise in respect of a particular committee, is to include at least one person who is —
- (a) a member of the Libraries Council; or

(b) an officer or employee of the department who is nominated by the State Librarian.

(3) Subject to the directions of the Libraries Council, a committee is to determine its own procedures.

5 **16. Disclosure of interests**

(1) A member who has a material personal interest in a matter being considered or about to be considered by the Libraries Council 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 Libraries Council.

10

Penalty: \$1 000.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

17. Voting by interested members

15

A member of the Libraries Council who has a material personal interest in a matter being considered by the Council —

(a) must not vote whether at a meeting or otherwise —

(i) on the matter; or

(ii) on a proposed resolution under clause 18 in respect of the matter, whether relating to that member or a different member; and

20

(b) must not be present while —

(i) the matter; or

(ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

25

is being considered at a meeting.

18. Clause 17 may be declared inapplicable

Clause 17 does not apply if the Libraries Council has at any time passed a resolution that —

- 5 (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

19. Quorum where clause 17 applies

- 10 (1) Despite clause 10, if a member of the Libraries Council is disqualified under clause 17 in relation to a matter, a quorum is present during the consideration of the matter if at least 3 members are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- 15 (2) The Minister may deal with a matter to the extent that the Libraries Council cannot deal with it because of subclause (1).

20. Minister may declare clauses 17 and 19 inapplicable

- (1) The Minister may by writing declare that clause 17 or 19 does not, or both of them do not, apply in relation to a specified matter either generally or in voting on particular resolutions.
- 20 (2) The Minister is to cause a copy of a declaration made under subclause (1) to be laid before each House of Parliament as soon as practicable after the declaration is made.

Schedule 2 — Transitional provisions

[s. 55]

1. Definitions

In this Schedule —

5 **“assets”** means property of every kind whether tangible or intangible,
real or personal, corporeal or incorporeal and includes without
limiting this definition —

- (a) choses in action;
- (b) goodwill; and
- 10 (c) rights, interests and claims of every kind in or to property,
whether arising from, accruing under, created or evidenced by or
the subject of an instrument or otherwise and whether liquidated
or unliquidated, actual, contingent or prospective;

15 **“commencement day”** means the day on which Part 2 comes into
operation;

“former body corporate” means —

- (a) The Board of the Art Gallery of Western Australia
preserved and continued under section 5 of the *Art Gallery
Act 1959*;
 - 20 (b) The Library Board of Western Australia constituted under
section 5 of the *Library Board of Western Australia
Act 1951*;
 - (c) the Perth Theatre Trust established under section 4 of the
Perth Theatre Trust Act 1979; or
 - 25 (d) The Western Australian Museum constituted under
section 7 of the *Museum Act 1969*,
- as in force immediately before the commencement day;

“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;

5 **“right”** means any right, power, privilege or immunity whether actual, contingent or prospective.

2. Interpretation Act to apply

This Schedule does not limit the operation of the *Interpretation Act 1984*.

10 **3. Former bodies corporate abolished**

On the commencement day each former body corporate is dissolved and its members go out of office.

4. Devolution of assets and liabilities, etc.

On the commencement day —

- 15 (a) the assets and rights of a former body corporate that were immediately before that day vested in that body vest in the Corporate Minister;
- (b) the liabilities of a former body corporate immediately before that day become the liabilities of the Corporate Minister;
- 20 (c) any proceedings or remedy that immediately before that day might have been brought or continued by or available against or to a former body corporate may be brought or continued by and are or is available against or to the Corporate Minister; and
- 25 (d) the Corporate Minister is to take delivery of all papers, documents, minutes, books of account and other records (however compiled, recorded or stored) relating to the operations of a former body corporate.

5. Completion of things begun

5 Anything begun before the commencement day by a former body corporate may be continued after that day by the Corporate Minister so far as the doing of that thing is within the functions of the Corporate Minister.

6. Continuing effect of things done

10 Any act, matter or thing done or omitted to be done before the commencement day by, to or in respect of a former body corporate, to the extent that that act, matter or thing has any force or effect after that day, is to be taken to have been done or omitted to be done by, to or in respect of the Corporate Minister.

7. Agreements and instruments

15 Any agreement or instrument subsisting immediately before the commencement day —

- (a) to which a former body corporate was a party; or
- (b) that contains a reference to a former body corporate,

has effect on and after that day as if —

- (c) the Corporate Minister were substituted for the former body corporate as a party to the agreement or instrument; or
- 20 (d) any reference in the agreement or instrument to the former body corporate were (unless the context otherwise requires) amended to be or include a reference to the Corporate Minister.

8. Financial reporting of former bodies corporate

25 Despite section 54 of the *Financial Administration and Audit Act 1985*, the accountable officer of the department is to be the accountable authority of a former body corporate for the purposes of the report required by section 66 of that Act with respect to the period from 1 July in a financial year to a day that —

- 30 (a) occurs in the same financial year; and

(b) immediately precedes the commencement day,

and Division 14 of Part II of that Act applies to that person as the accountable authority of a former body corporate as if that period were a full financial year.

5 **9. Further transitional provisions may be made**

(1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the transition from a former body corporate to the Corporate Minister, that provision may be made by regulations under section 53.

10 (2) Any such regulation may be made so as to have effect from the commencement day.

(3) To the extent that any such regulation has effect on a day that is earlier than the day of its publication in the *Gazette*, the regulation does not operate so as —

15 (a) to affect, in a manner prejudicial to any person (other than the State or the Corporate Minister), the rights of that person existing before the day of its publication; or

 (b) to impose liabilities on any person (other than the State or the Corporate Minister), in respect of anything done or omitted to be done before the day of its publication.

20 **10. Exemption from State tax**

(1) In this clause —

 “**State tax**” includes stamp duty chargeable under the *Stamp Act 1921* and any other tax, duty, fee, levy or charge under a law of the State.

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

 (a) anything that occurs by the operation of this Schedule; or

- 5
- (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Schedule, or to give effect to this Schedule, or for a purpose connected with or arising out of giving effect to this Schedule.

11. Registration of documents

10 The Registrar of Titles is to take notice of the provisions of this Schedule and is empowered to record and register in the appropriate manner the necessary documents and otherwise to give effect to this Schedule.

12. Saving

The operation of any provision of this Schedule is not to be regarded —

- 15
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information;
 - 20 (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability;
 - (d) as causing any contract or instrument to be void or otherwise unenforceable; or
 - 25 (e) as releasing or allowing the release of any surety.

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