

South Australia

# Adelaide Festival Corporation Act 1998

An Act to establish the Adelaide Festival Corporation; to provide for the conduct of the Adelaide Festival of Arts; and for other purposes.

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Adelaide Festival Corporation Act 1998*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

*authorised officer*—see Part 5;

*board* means the board established as the governing authority of the Corporation under section 7;

*Corporation* means the Adelaide Festival Corporation established under this Act;

*employing authority* means the person designated by proclamation as being the employing authority for the purposes of this definition;

*member* means member of the board;

*occupy*, in relation to premises, means have, or be entitled to, possession or control of the premises;

*official insignia*—see Part 6;

*premises of the Corporation* means premises owned or occupied by the Corporation;

*promote*, in relation to an event or activity, includes organise, commission, fund, support, market, advertise or act as project manager.

- (3) A proclamation made for the purposes of the definition of *employing authority*—
- (a) may apply by reference to a specified person, or by reference to the person for the time being holding or acting in a specified office or position; and
  - (b) may, from time to time as the Governor thinks fit, be varied or substituted by a new proclamation.

## **Part 2—Establishment of Adelaide Festival Corporation**

### **4—Establishment of Adelaide Festival Corporation**

- (1) The *Adelaide Festival Corporation* is established.
- (2) The Corporation—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) can sue and be sued in its corporate name; and
  - (d) is an instrumentality of the Crown and holds property on behalf of the Crown; and
  - (e) has the functions and powers assigned or conferred under this or any other Act.

## **Part 3—Functions and powers of Corporation**

### **5—Functions of the Corporation**

The functions of the Corporation are—

- (a) to conduct in Adelaide and other parts of the State the multifaceted arts event that is known as the Adelaide Festival of Arts;
- (b) to continue and further develop the Adelaide Festival of Arts as an event of international standing and excellence;
- (c) to conduct or promote other events and activities;
- (d) to provide advisory, consultative, managerial or support services within areas of the Corporation's expertise;
- (e) to undertake other activities that promote the arts or public interest in the arts, or that otherwise involve an appropriate use of its resources;

- (f) to carry out other functions assigned to the Corporation by or under this or any other Act, or by the Minister.

## **6—Powers**

- (1) The Corporation has, in addition to any other powers conferred on it under this or any other Act, all the powers of a natural person.
- (2) The Corporation may, for example, do any 1 or more of the following (subject to this Act):
  - (a) engage agents, consultants or other contractors;
  - (b) enter into contracts or agreements with artists, performers, entertainers and other persons involved in the arts, or employ such persons;
  - (c) enter into other contracts, agreements or arrangements;
  - (d) acquire, hold, take on hire, lend, exchange or dispose of objects, works or collections of artistic, historical or cultural interest;
  - (e) acquire, hold, deal with or dispose of—
    - (i) licences; or
    - (ii) intellectual property (including patents and copyright); or
    - (iii) any other property (whether real or personal); or
    - (iv) any interest in such property;
  - (f) accept grants or obtain financial sponsorship from any person or body;
  - (g) carry on any advertising and promotional activities;
  - (h) conduct events and establish, operate, manage or make available venues and other facilities (including facilities for food and liquor) on premises of the Corporation;
  - (i) regulate and control admission to any venue for any events or activities conducted or promoted by the Corporation, and charge and collect fees for admission to any such venue;
  - (j) grant for fee or other consideration advertising or sponsorship rights or other rights, licences or concessions in connection with events or activities conducted or promoted by the Corporation;
  - (k) publish or produce books, programs, brochures, films, souvenirs and other information or things relating to events or activities conducted or promoted by the Corporation;
  - (l) sell or supply food and drink (including liquor), books, programs, brochures, films, souvenirs and other things in connection with events or activities conducted or promoted by the Corporation;
  - (m) grant or dispose of rights to televise, broadcast or record any events or activities conducted or promoted by the Corporation;
  - (n) restrict, control and make charges for the use of official insignia;
  - (o) take out policies of insurance in its own right or on behalf of the State;

- (p) participate (whether as a member or otherwise) in, or otherwise be involved in the activities of, national or international organisations or associations involved in the arts, or the promotion of the arts;
  - (q) give or contribute towards prizes in competitions designed to encourage artistic or cultural or performing arts activity within the State or make grants and give other assistance for such purposes;
  - (r) enter into any partnership or joint venture arrangement;
  - (s) form, or acquire, hold, deal with and dispose of shares or other interests in, or securities issued by, bodies corporate, whether within or outside of the State;
  - (t) borrow money and obtain other forms of financial accommodation;
  - (u) act as trustee on behalf of another person in connection with the performance of its functions under this Act.
- (3) However, the Corporation must not, without the approval of the Treasurer, exercise a power referred to in subsection (2)(s) or (t).
- (3a) The Corporation is not obliged to accept or keep material that is not, in its opinion, of sufficient artistic, historical, cultural or other interest to justify its collection or preservation under this Act.
- (4) The Corporation may exercise its powers within or outside of the State.

## **Part 4—Management of Corporation**

### **Division 1—Board**

#### **7—Establishment of board**

- (1) There will be a board to act as the governing authority of the Corporation.
- (2) The functions and powers of the Corporation may be performed and exercised by the board and decisions made by the board are decisions of the Corporation.

### **Division 1A—Membership, proceedings etc**

#### **8—Composition of board**

- (1) The board will consist of not more than 8 members appointed by the Governor, of whom—
  - (a) 1 will be selected from a panel of 3 persons nominated by The Corporation of the City of Adelaide; and
  - (b) the remainder will be nominated by the Minister.
- (2) At least 2 members must be women and at least 2 must be men.
- (3) The Governor will appoint 1 of the members nominated by the Minister to be the presiding member.
- (4) The Governor may appoint a suitable person to be the deputy of a member (being a person nominated by the body or person who nominated the member) and the deputy may perform or exercise the functions and powers of the member in the member's absence.

## **9—Conditions of membership**

- (1) A member will be appointed for a term not exceeding 3 years and on conditions determined by the Governor and specified in the instrument of appointment.
- (2) A member will, at the expiration of a term of appointment, be eligible for reappointment (subject to the qualification that a person cannot serve as a member for more than 9 consecutive years).
- (3) The Governor may remove a member from office—
  - (a) for misconduct; or
  - (b) for failure or incapacity to carry out the duties of his or her office satisfactorily; or
  - (c) for contravention of a condition of his or her appointment; or
  - (d) if serious irregularities have occurred in the conduct of the board's affairs or the board has failed to carry out its functions satisfactorily and its membership should, in the opinion of the Governor, be reconstituted for that reason.
- (4) The office of a member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (e) is absent without leave of the presiding member of the board from 3 consecutive meetings of the board; or
  - (f) is removed from office under subsection (3).
- (5) On the office of a member becoming vacant, a person may be appointed in accordance with this Division to the vacant office.
- (6) A member is entitled to fees, allowances and expenses determined by the Governor.

## **12—Proceedings**

- (1) A quorum of the board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.
- (2) In the absence of the presiding member at a meeting of the board, a member chosen by the members present at the meeting will preside.
- (3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the board.
- (4) Each member present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

- (5) A conference by telephone or other electronic means between members will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present if—
- (a) notice of the conference is given to all members in the manner determined by the board for the purpose; and
  - (b) each participating member is capable of communicating with every other participating member during the conference.
- (6) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
- (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the board; and
  - (b) a majority of the members expresses concurrence in the proposed resolution by letter or by fax or other written communication setting out the terms of the resolution.
- (6a) The board must meet at least 6 times in each year.
- (7) The board must have accurate minutes kept of its proceedings.
- (8) Subject to this Act, the board may determine its own procedures.
- (9) Subject to the directions of the board and section 15, this section applies to a committee of the board in the same way as to the board.

### **13—Validity of acts**

An act or proceeding of the board or a committee of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### **14—Ministerial control**

- (1) Subject to subsection (2), the board is subject to the general control and direction of the Minister.
- (2) No Ministerial direction can be given—
- (a) as to the artistic nature or content of—
    - (i) objects, works or collections held or promoted by the Corporation; or
    - (ii) performances or other events or activities conducted or promoted by the Corporation; or
  - (b) as to the manner in which the board is to deal with a testamentary or other gift; or
  - (c) as to any advice or recommendation that the board makes or is required to make to the Minister.

## **Division 3—Committees and delegations**

### **15—Committees**

- (1) The board may establish such committees (including advisory or subcommittees) as the board thinks fit.

- (2) The membership and conditions of membership of a committee will be determined by the board and may, but need not, consist of, or include, members of the board.
- (3) The procedures to be observed in relation to the conduct of the business of a committee will be—
  - (a) as determined by the board;
  - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

## **16—Delegation**

- (1) The board may delegate a function or power of the board under this Act (other than this power of delegation) to any person or committee or other body (including a person for the time being performing particular duties or holding or acting in a specified position).
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) A delegate must not act pursuant to the delegation in any matter in which the delegate has a direct or indirect pecuniary or personal interest.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.
- (6) In legal proceedings, an apparently genuine certificate, purportedly signed by the board containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## **Division 3A—Conflict of interest under Public Sector (Honesty and Accountability) Act**

### **17—Conflict of interest under Public Sector (Honesty and Accountability) Act**

A member of the board will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in a matter that is shared in common with those engaged in or associated with the arts industry generally, or a substantial section of those engaged in or associated with the arts industry.



## **Division 3B—Common seal and execution of documents**

### **18—Common seal and execution of documents**

- (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board and the fixing of the seal must be attested by the signatures of 2 members of the board.
- (2) The board may, by instrument under the common seal of the Corporation, authorise a person or persons (whether nominated by name or by office or title) to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), the board may authorise 2 or more persons to execute documents jointly on behalf of the Corporation.
- (4) A document is duly executed by the Corporation if—
  - (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
  - (b) the document is signed on behalf of the Corporation by a person or persons in accordance with authority conferred under this section.
- (5) If an apparently genuine document purports to bear the common seal of the Corporation, it will be presumed, in the absence of proof to the contrary, that the common seal of the Corporation was duly affixed to the document.

## **Division 4—Financial matters and annual reports**

### **18A—Annual budget**

- (1) The board must, from time to time, prepare and submit to the Minister a budget for the next financial year or for some other period determined by the Minister.
- (2) The budget must set out estimates of the Corporation's receipts and expenditures for the period to which the budget relates.
- (3) The budget must conform with any requirements of the Minister as to its form and the matters to be addressed by the budget.
- (4) The Minister may approve a budget submitted under this section with or without modification.
- (5) Subject to subsection (6), the board must not, without the consent of the Minister, make an expenditure that is not provided for by a budget that has been approved by the Minister under this section.
- (6) The board is not required to have the approval of the Minister with respect to the expenditure of money received by the Corporation by way of a testamentary or other gift.

### **19—Accounts and audit**

- (1) The board must cause proper accounting records to be kept in relation to the financial affairs of the Corporation, and must have annual statements of account prepared in respect of each financial year.

- (2) The accounting records and the statements of account must comply with—
  - (a) any instructions of the Treasurer under section 41 of the *Public Finance and Audit Act 1987*; and
  - (b) any further requirements imposed by the Auditor-General.
- (3) The Auditor-General may at any time audit the accounts of the Corporation and must audit the annual statements of account.

## **20—Annual report**

- (1) The board must, on or before 30 September in every year, forward to the Minister a report on the work and operations of the Corporation for the preceding financial year.
- (2) The report must contain the audited statements of account of the Corporation for the preceding financial year.
- (3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **Division 5—Staffing arrangements**

### **20A—Staffing arrangements**

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Corporation.
- (2) The terms and conditions of employment of a person under subsection (1) will be determined by the employing authority.
- (3) A person employed under this section will be taken to be employed by or on behalf of the Crown (but will not be employed in the Public Service of the State unless brought into an administrative unit under the *Public Sector Act 2009*).
- (4) The employing authority may direct a person employed under this section to perform functions in connection with the operations or activities of a public sector agency specified by the employing authority (and the person must comply with that direction).
- (5) The employing authority is, in acting under this section, subject to direction by the Minister.
- (6) However, no Ministerial direction may be given by the Minister relating to the appointment, transfer, remuneration, discipline or termination of a particular person.
- (7) The employing authority may delegate a power or function under this section.
- (8) A delegation under subsection (7)—
  - (a) must be by instrument in writing; and
  - (b) may be made to a body or person (including a person for the time being holding or acting in a specified office or position); and
  - (c) may be unconditional or subject to conditions; and
  - (d) may, if the instrument of delegation so provides, allow for the further delegation of a power or function that has been delegated; and
  - (e) does not derogate from the power of the employing authority to act personally in any matter; and

- (f) may be revoked at any time by the employing authority.
- (9) A change in the person who constitutes the employing authority under this Act will not affect the continuity of employment of a person under this section.
- (10) The Corporation must, at the direction of the Minister, the Treasurer or the employing authority, make payments with respect to any matter arising in connection with the employment of a person under this section (including, but not limited to, payments with respect to salary or other aspects of remuneration, leave entitlements, superannuation contributions, taxation liabilities, workers compensation payments, termination payments, public liability insurance and vicarious liabilities).
- (11) The Corporation does not have the power to employ any person.
- (12) The Corporation may, under an arrangement established by a Minister administering an administrative unit, make use of the services or staff of that administrative unit.
- (13) In this section—

*public sector agency* has the same meaning as in the *Public Sector Act 2009*.

## Part 5—Authorised officers

### 21—Appointment of authorised officers

- (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.
- (2) Each police officer is an authorised officer for the purposes of this Act.
- (3) An appointment under subsection (1) may be made subject to conditions or limitations specified in the instrument of appointment (and the exercise by an authorised officer of powers conferred under this Act is subject to the conditions and limitations (if any) specified in his or her instrument of appointment).
- (4) An authorised officer other than a police officer must be issued with an identity card—
- (a) containing the person's name and a photograph of the person; and
  - (b) stating that the person is an authorised officer for the purposes of this Act; and
  - (c) stating any conditions or limitations on the authorised officer's authority.
- (5) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this Act, produce for inspection by the person—
- (a) in the case of an authorised officer appointed under subsection (1)—his or her identity card; and
  - (b) in the case of an authorised officer who is a police officer and is not in uniform—his or her certificate of authority.
- (6) If a person in possession of an identity card issued to the person under this section ceases to be an authorised officer, the person must immediately return the identity card to the Minister.

Maximum penalty: \$250.

## 22—Powers of authorised officers

- (1) If an authorised officer reasonably suspects that a person, while on premises of the Corporation, has committed, is committing or is about to commit an offence against this or any other Act, the authorised officer may do any 1 or more of the following:
  - (a) require the person to state his or her full name and usual place of residence;
  - (b) if the authorised officer suspects on reasonable grounds that the name or place of residence stated is false—require the person to produce evidence of his or her full name or usual place of residence;
  - (c) require the person to leave those premises immediately and not to return for a stated period (not exceeding 24 hours) or not to enter those premises;
  - (d) if the person refuses or fails to comply with a requirement under paragraph (c)—use such force as is reasonably necessary for the purpose of removing or excluding the person from those premises;
  - (e) cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable.
- (2) An authorised officer may also—
  - (a) require a person to surrender any object, substance or thing that the authorised officer reasonably suspects has been, is being, or is about to be, used on premises of the Corporation in contravention of this Act; and
  - (b) give such directions to persons on premises of the Corporation that the authorised officer considers necessary for—
    - (i) the maintenance of good order, the prevention of interference with events or other activities, or the safe and efficient regulation of vehicular or pedestrian traffic, on those premises; or
    - (ii) the protection of property under the care or control of the Corporation; and
  - (c) use such force as may reasonably be required—
    - (i) for the purpose of removing or excluding from premises of the Corporation a person who refuses or fails to comply with a requirement or direction under this section; or
    - (ii) for the purposes of seizing goods under section 27; and
  - (d) exercise any other prescribed power.
- (3) An authorised officer may, in exercising powers under this Act, be accompanied by such assistants as are reasonably required in the circumstances.
- (4) For the purposes of this section, a reference to *premises of the Corporation* includes a reference to a part of those premises.

## 23—Hindering etc authorised officers

- (1) A person who—
  - (a) without reasonable excuse hinders or obstructs an authorised officer; or

- 
- (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
  - (c) produces a document that he or she knows, or ought to know, is false or misleading in a material particular; or
  - (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
  - (e) uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or
  - (f) falsely represents, by words or conduct, that he or she is an authorised officer,

is guilty of an offence.

Maximum penalty: \$2 500.

- (2) A person is not obliged to answer a question or to produce a document as required under this Act if to do so might tend to incriminate the person or make the person liable to a penalty.

## Part 6—Official insignia

### 24—Interpretation

- (1) In this Part—

*official insignia* means—

- (a) an official title (declared under section 25); or
  - (b) a logo (declared under section 25); or
  - (c) a combination of the above.
- (2) For the purposes of this Part, goods will be taken to be marked with official insignia if the insignia is affixed or annexed to, marked on, or incorporated in or with—
    - (a) the goods; or
    - (b) any covering or container in which the goods are wholly or partly enclosed; or
    - (c) anything placed in or attached to any such covering or container; or
    - (d) anything that is attached to the goods or around which the goods are wrapped or wound.

### 25—Official titles and logos

- (1) *Adelaide Festival Corporation* is declared to be an official title.
- (2) The Minister may, by notice in the Gazette—
  - (a) declare some other name under which the Corporation may conduct its operations or part of its operations to be an official title; or
  - (b) declare a name or a title of an event or activity conducted or promoted by the Corporation to be an official title; or

- (c) declare a logo (being a design, the copyright of which is vested in the Crown in right of the State) to be a logo in respect of the Corporation or a particular event or activity conducted or promoted by the Corporation.
- (3) However, the Minister must not make a declaration under subsection (2) in relation to a name or title that is registered or otherwise protected under another Act unless the Minister is acting with the consent or agreement of the person who has the benefit of the registration or protection.
- (4) An official title declared under this section is not required to be registered or otherwise protected under any other Act.
- (5) The Minister may, by notice in the Gazette, vary or revoke a notice under this section.

## **26—Unlawful use of official insignia**

- (1) The Corporation has a proprietary interest in all official insignia.
- (2) A person must not, without the consent of the Corporation, in the course of a trade or business—
  - (a) use a name in which the Corporation has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits; or
  - (b) sell goods marked with official insignia; or
  - (c) use official insignia for the purpose of promoting the sale of goods or services.

Maximum penalty: \$20 000.

- (3) A person must not, without the consent of the Corporation, assume a name or description that consists of, or includes, official insignia.  
Maximum penalty: \$20 000.
- (4) A consent under this section—
  - (a) may be given with or without conditions (including conditions requiring payment to the Corporation); and
  - (b) may be given generally by notice in the Gazette or by notice in writing addressed to an applicant for the consent; and
  - (c) may be revoked by the Corporation for breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.
- (5) The Supreme Court may, on the application of the Corporation, grant an injunction to restrain a breach of this section.
- (6) The court by which a person is convicted of an offence against this section may, on the application of the Corporation, order the convicted person to pay compensation of an amount fixed by the court to the Corporation.
- (7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Corporation apart from those subsections.

## 27—Seizure etc of goods marked with official insignia

- (1) If—
  - (a) goods apparently intended for a commercial purpose are marked with official insignia; and
  - (b) an authorised officer suspects on reasonable grounds that the use of the insignia has not been authorised by the Corporation,the authorised officer may seize those goods.
- (2) If goods have been seized under this section and—
  - (a) proceedings are not instituted for an offence against section 26(2) in relation to the goods within 3 months of their seizure; or
  - (b) after proceedings have been instituted and completed, the defendant is not convicted,the person from whom they were seized is entitled to recover—
  - (c) the goods or, if they have been destroyed, compensation equal to the market value of the goods at the time of their seizure; and
  - (d) compensation for any loss suffered by reason of the seizure of the goods.
- (3) An action for the payment of compensation under subsection (2) may be brought against the Corporation in any court of competent jurisdiction.
- (4) The court by which a person is convicted of an offence against this Act may order that goods to which the offence relates be forfeited to the Crown.
- (5) Any goods forfeited to the Crown must be disposed of in such manner as the Minister may direct and, if sold, the proceeds of the sale paid into the Consolidated Account.

## Part 7—Miscellaneous

### 28—Gifts etc

- (1) The Corporation may accept—
  - (a) grants, conveyances, transfers and leases of land from the Crown, an instrumentality of the Crown or any other person or body; and
  - (b) rights to the use, control, management or occupation of any land; and
  - (c) gifts of personal property of any kind to be used or applied by it for the purposes of this Act.
- (2) Despite the *Stamp Duties Act 1923*, no stamp duty is payable on any instrument by which land or any interest in or right over land is granted or assured to or vested in the Corporation or on any contract or instrument executed by the Corporation for the purpose of disposing of any property.

### 29—Ministerial delegation

- (1) The Minister may delegate a function or power of the Minister under this Act (other than this power of delegation) to any person (including a person for the time being performing particular duties or holding or acting in a specified position).

- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) In legal proceedings, an apparently genuine certificate, purportedly signed by the Minister containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

### **30—Approvals by Treasurer**

- (1) An approval given by the Treasurer under this Act may be—
  - (a) specific or general; and
  - (b) conditional or unconditional.
- (2) An approval given by the Treasurer may be varied or revoked by the Treasurer at any time.

### **31—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) provide for the use, care and protection of objects, works, collections or any other property under the care or control of the Corporation; and
  - (b) provide for the admission, exclusion or expulsion of members of the public to or from premises of the Corporation or a part of those premises; and
  - (c) prohibit disorderly or offensive behaviour on premises of the Corporation; and
  - (d) prohibit or regulate eating, drinking (including liquor), smoking or the consumption of unlawful substances on premises of the Corporation or a part of those premises; and
  - (e) prohibit or regulate any other conduct or activities for the purposes of—
    - (i) maintaining good order, and preventing interference with events or activities conducted, on premises of the Corporation; and
    - (ii) protecting property under the care or control of the Corporation; and
  - (f) prohibit or regulate the driving, parking or standing of vehicles on premises of the Corporation; and
  - (g) prescribe fees for the parking of vehicles on premises of the Corporation and provide for their payment and recovery; and



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- (h) provide that the owner and driver of a vehicle driven, parked or left standing in contravention of the regulations are each guilty of an offence and provide or exclude defences in relation to any such offence; and
  - (i) provide for the management (including disposal) by, and vesting in, the Corporation of unclaimed property; and
  - (j) provide for the approval by the board or an authorised officer of any act or activity that would otherwise be prohibited under the regulations; and
  - (k) prescribe penalties not exceeding \$1 250 for breach of any regulation.
- (3) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the board or another prescribed person or authority.
- (4) In proceedings for an offence against a regulation dealing with the driving, parking or standing of vehicles—
- (a) an allegation in a complaint that a person named in the complaint was the owner of a specified vehicle on a specified day will be taken to be proved in the absence of proof to the contrary; and
  - (b) if it is proved that a vehicle was parked in contravention of a regulation, it will be presumed, in the absence of proof to the contrary, that the vehicle was so parked by the owner of the vehicle.

## **Schedule—Transitional provisions**

### **1—Transfer of staff**

- (1) The Governor may, by proclamation, declare that a person who is, immediately before the commencement of this clause, employed or engaged for any purpose associated with the conduct of the Adelaide Festival of Arts is to be employed in a position in the employment of the Corporation (and such a proclamation will have effect according to its terms).
- (2) The transfer of a person's employment under subclause (1)—
  - (a) does not constitute a termination of a pre-existing employment agreement; and
  - (b) does not affect—
    - (i) existing conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.
- (3) The Governor may, by proclamation, make any transitional or ancillary provision that may be necessary or expedient in connection with the operation of subclause (1).

## 2—Transfer of assets and liabilities

- (1) The Minister may, by instrument in writing, vest assets or liabilities of the Minister associated with the Adelaide Festival of Arts in the Corporation.
- (2) An instrument under subclause (1) may, in relation to assets or liabilities of the Minister associated with the Adelaide Festival of Arts, be expressed to operate—
  - (a) in relation to all assets or liabilities;
  - (b) in relation to various classes of assets or liabilities;
  - (c) in relation to specific assets or liabilities.
- (3) An instrument under subclause (1) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the vesting of assets or liabilities.
- (4) The vesting of assets or liabilities under this clause operates by force of this clause and despite the provisions of any other law or instrument.
- (5) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this clause, register or record in an appropriate manner a vesting under this clause.
- (6) No fee is payable in respect of an application under subclause (5).
- (7) Nothing done under this clause—
  - (a) constitutes a breach of, or default under, an Act or other law; or
  - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or
  - (d) constitutes a civil or criminal wrong; or
  - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
  - (f) releases a surety or other obligee wholly or in part from an obligation.

- (8) In this clause—

**asset** means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity,

(and includes a present or future cause of action in favour of the Minister);

**liability** means a present, contingent or future liability or obligation (including a non-pecuniary obligation and a present or future cause of action against the Minister).

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1998	73	<i>Adelaide Festival Corporation Act 1998</i>	17.12.1998	1.4.1999 ( <i>Gazette 18.3.1999 p1424</i> )
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 5 (ss 12—14)—1.4.2007 ( <i>Gazette 29.3.2007 p930</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 8 (ss 17 & 18)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2010</b>	<b>19</b>	<b><i>Statutes Amendment (Arts Agencies Governance and Other Matters) Act 2010</i></b>	<b>28.10.2010</b>	<b>Pt 3 (ss 15—28) &amp; Sch 1 (Pt 3 &amp; Pt 9 cll 3 &amp; 13)—12.5.2011 (<i>Gazette 12.5.2011 p1460</i>)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
<b>s 3(1)</b>	<b>amended by 19/2010 s 15(1)</b>	<b>12.5.2011</b>
<b>authorised officer</b>	<b>inserted by 19/2010 s 15(2)</b>	<b>12.5.2011</b>
<b>board</b>	<b>substituted by 19/2010 s 15(2)</b>	<b>12.5.2011</b>
employing authority	inserted by 41/2006 s 12(1)	1.4.2007
<i>logo</i>	<i>deleted by 19/2010 s 15(3)</i>	<i>12.5.2011</i>
<b>member</b>	<b>inserted by 19/2010 s 15(3)</b>	<b>12.5.2011</b>
<b>occupy</b>	<b>inserted by 19/2010 s 15(3)</b>	<b>12.5.2011</b>
<b>official insignia</b>	<b>substituted by 19/2010 s 15(3)</b>	<b>12.5.2011</b>
<i>official symbol</i>	<i>deleted by 19/2010 s 15(3)</i>	<i>12.5.2011</i>
<i>official title</i>	<i>deleted by 19/2010 s 15(3)</i>	<i>12.5.2011</i>

<b>premises of the Corporation</b>	<b>inserted by 19/2010 s 15(3)</b>	<b>12.5.2011</b>
<b>promote</b>	<b>substituted by 19/2010 s 15(3)</b>	<b>12.5.2011</b>
<i>s 3(2)</i>	<i>deleted by 19/2010 15(4)</i>	<i>12.5.2011</i>
<i>s 3(3)</i>	inserted by 41/2006 s 12(2)	1.4.2007
Pt 2		
<b>s 4</b>		
<i>s 4(2)</i>	<b>substituted by 19/2010 Sch 1 Pt 3</b>	<b>12.5.2011</b>
<i>s 4(3)</i>	<i>deleted by 19/2010 Sch 1 Pt 3</i>	<i>12.5.2011</i>
Pt 3		
<b>heading</b>	<b>substituted by 19/2010 s 16</b>	<b>12.5.2011</b>
<b>s 6</b>		
<b>s 6(1)</b>	<b>substituted by 19/2010 s 17(1)</b>	<b>12.5.2011</b>
<i>s 6(2) before substitution by 19/2010</i>	<i>(a) deleted by 41/2006 s 13</i>	<i>1.4.2007</i>
<b>s 6(2)</b>	<b>substituted by 19/2010 s 17(1)</b>	<b>12.5.2011</b>
<b>s 6(3a)</b>	<b>inserted by 19/2010 s 17(2)</b>	<b>12.5.2011</b>
<b>s 6(4)</b>	<b>amended by 19/2010 s 17(3)</b>	<b>12.5.2011</b>
Pt 4		
<b>heading</b>	<b>substituted by 19/2010 s 18</b>	<b>12.5.2011</b>
Pt 4 Div 1A		
<b>heading</b>	<b>inserted by 19/2010 s 19</b>	<b>12.5.2011</b>
<b>ss 8 and 9</b>	<b>substituted by 19/2010 s 20</b>	<b>12.5.2011</b>
<i>ss 10 and 11</i>	<i>deleted by 19/2010 s 20</i>	<i>12.5.2011</i>
<b>s 12</b>		
<b>s 12(2)</b>	<b>amended by 19/2010 s 21(1)</b>	<b>12.5.2011</b>
<b>s 12(6)</b>	<b>amended by 19/2010 s 21(2)</b>	<b>12.5.2011</b>
<b>s 12(6a)</b>	<b>inserted by 19/2010 s 21(3)</b>	<b>12.5.2011</b>
<b>s 12(9)</b>	<b>inserted by 19/2010 s 21(4)</b>	<b>12.5.2011</b>
<i>s 13</i>	substituted by 84/2009 s 17	1.2.2010
	<b>substituted by 19/2010 s 22</b>	<b>12.5.2011</b>
<i>s 14</i>	<i>deleted by 84/2009 s 17</i>	<i>1.2.2010</i>
<b>s 14</b>	<b>inserted by 19/2010 s 22</b>	<b>12.5.2011</b>
<i>s 15</i>	<i>deleted by 84/2009 s 17</i>	<i>1.2.2010</i>
<b>Pt 4 Div 2</b>	<i>deleted by 19/2010 s 23</i>	<i>12.5.2011</i>
Pt 4 Div 3		
<b>s 15</b>	<b>s 17 redesignated as s 15 by 19/2010 s 24(2)</b>	<b>12.5.2011</b>
<b>s 15(2)</b>	<b>s 17(2) amended by 19/2010 s 24(1)</b>	<b>12.5.2011</b>
<i>s 17—see s 15</i>		
Pt 4 Div 3B		
<b>s 16</b>	<b>inserted by 19/2010 s 25</b>	<b>12.5.2011</b>
<i>s 18</i>	<i>deleted by 19/2010 s 25</i>	<i>12.5.2011</i>
<b>Pt 4 Div 3A</b>	<b>inserted by 19/2010 s 26</b>	<b>12.5.2011</b>

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<b>Pt 4 Div 3B</b>	<b>inserted by 19/2010 s 26</b>	<b>12.5.2011</b>
Pt 4 Div 4		
<b>s 18A</b>	<b>inserted by 19/2010 s 27</b>	<b>12.5.2011</b>
Pt 4 Div 5	inserted by 41/2006 s 14	1.4.2007
s 20A		
s 20A(3)	amended by 84/2009 s 18	1.2.2010
s 20A(13)		
public sector agency	amended by 84/2009 s 18	1.2.2010
<b>Pt 5</b>	<b>substituted by 19/2010 s 28</b>	<b>12.5.2011</b>
<b>Pt 6</b>	<b>inserted by 19/2010 s 28</b>	<b>12.5.2011</b>
<b>Pt 7</b>	<b>inserted by 19/2010 s 28</b>	<b>12.5.2011</b>

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (Public Sector Employment) Act 2006, Sch 1—Transitional provisions*

Note—

Also see *Statutes Amendment (Public Sector Employment) (Transitional Provisions) Regulations 2007*.

## 1—Interpretation

In this Part, unless the contrary intention appears—

**Commonwealth Act** means the *Workplace Relations Act 1996* of the Commonwealth;

**employing authority** means—

- (a) subject to paragraph (b)—the person who is the employing authority under a relevant Act;
- (b) in a case that relates to employment under the *Fire and Emergency Services Act 2005*—the Chief Executive of the South Australian Fire and Emergency Services Commission, or the Chief Officer of an emergency services organisation under that Act, as the case requires;

**Industrial Commission** means the Industrial Relations Commission of South Australia;

**prescribed body** means—

- (a) the Aboriginal Lands Trust;
- (b) the Adelaide Cemeteries Authority;
- (c) the Adelaide Festival Centre Trust;
- (d) the Adelaide Festival Corporation;
- (e) SA Ambulance Service Inc;
- (f) the Minister to whom the administration of the *Children's Services Act 1985* is committed;

- (g) the Minister to whom the administration of the *Education Act 1972* is committed;
- (h) the Electricity Supply Industry Planning Council;
- (i) a body constituted under the *Fire and Emergency Services Act 2005*;
- (j) the History Trust of South Australia;
- (k) the Institute of Medical and Veterinary Science;
- (l) a regional NRM board constituted under the *Natural Resources Management Act 2004*;
- (m) the Senior Secondary Assessment Board of South Australia;
- (n) the South Australian Country Arts Trust;
- (o) the South Australian Film Corporation;
- (p) the South Australian Health Commission;
- (q) an incorporated hospital under the *South Australian Health Commission Act 1976*;
- (r) an incorporated health centre under the *South Australian Health Commission Act 1976*;
- (s) the South Australian Motor Sport Board;
- (t) the South Australian Tourism Commission;
- (u) The State Opera of South Australia;
- (v) the State Theatre Company of South Australia;
- (w) the Minister to whom the administration of the *Technical and Further Education Act 1975* is committed;

**relevant Act** means—

- (a) in a case that relates to employment with a prescribed body established under an Act being amended by this Act—that Act;
- (b) in a case that relates to employment with a prescribed body who is a Minister to whom the administration of an Act being amended by this Act is committed—that Act;
- (c) in a case that relates to employment with a body constituted under the *Fire and Emergency Services Act 2005*—that Act.

## **2—Transfer of employment**

- (1) Subject to this clause, a person who, immediately before the commencement of this clause, was employed by a prescribed body under a relevant Act will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act).

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- (2) The following persons will, on the commencement of this clause, be taken to be employed as follows:
- (a) a person who, immediately before the commencement of this clause, was employed under section 6L(1) of the *Electricity Act 1996* will, on that commencement, be taken to be employed by the employing authority under that Act (as amended by this Act);
  - (b) a person who, immediately before the commencement of this clause, was employed by the South Australian Fire and Emergency Services Commission will, on that commencement, be taken to be employed by the Chief Executive of that body;
  - (c) a person who, immediately before the commencement of this clause, was employed by an emergency services organisation under the *Fire and Emergency Services Act 2005* will, on that commencement, be taken to be employed by the Chief Officer of that body;
  - (d) a person who, immediately before the commencement of this clause, was employed by an incorporated hospital or an incorporated health centre under the *South Australian Health Commission Act 1976* will, on that commencement, be taken to be employed by an employing authority under that Act (as amended by this Act) designated by the Governor by proclamation made for the purposes of this paragraph.
- (3) Subject to this clause, the Governor may, by proclamation, provide that a person employed by a subsidiary of a public corporation under the *Public Corporations Act 1993* will be taken to be employed by a person or body designated by the Governor (and the arrangement so envisaged by the proclamation will then have effect in accordance with its terms).
- (4) Subject to subclause (5), an employment arrangement effected by subclause (1), (2) or (3)—
- (a) will be taken to provide for continuity of employment without termination of the relevant employee's service; and
  - (b) will not affect—
    - (i) existing conditions of employment or existing or accrued rights to leave; or
    - (ii) a process commenced for variation of those conditions or rights.
- (5) If, immediately before the commencement of this clause, a person's employment within the ambit of subclause (1), (2) or (3) was subject to the operation of an award or certified agreement (but not an Australian Workplace Agreement) under the Commonwealth Act, then, on that commencement, an award or enterprise agreement (as the case requires) will be taken to be created under the *Fair Work Act 1994*—
- (a) with the same terms and provisions as the relevant industrial instrument under the Commonwealth Act; and

- (b) with any terms or provisions that existed under an award or enterprise agreement under the *Fair Work Act 1994*, that applied in relation to employment of the kind engaged in by the person, immediately before 27 March 2006, and that ceased to apply by virtue of the operation of provisions of the Commonwealth Act that came into force on that day, subject to any modification or exclusion prescribed by regulations made for the purposes of this subclause and subject to the operation of subclause (6).
- (6) Where an award or enterprise agreement is created by virtue of the operation of subclause (5)—
- (a) the award or enterprise agreement will be taken to be made or approved (as the case requires) under the *Fair Work Act 1994* on the day on which this clause commences; and
  - (b) the *Fair Work Act 1994* will apply in relation to the award or enterprise agreement subject to such modifications or exclusions as may be prescribed by regulations made for the purposes of this subclause; and
  - (c) the Industrial Commission may, on application by the Minister to whom the administration of the *Fair Work Act 1994* is committed, or an application by a person or body recognised by regulations made for the purposes of this subclause, vary or revoke any term or provision of the award or enterprise agreement if the Industrial Commission is satisfied that it is fair and reasonable to do so in the circumstances.

### 3—Superannuation

- (1) If a prescribed body under a relevant Act is, immediately before the commencement of this clause, a party to an arrangement relating to the superannuation of one or more persons employed by the prescribed body, then the relevant employing authority under that Act will, on that commencement, become a party to that arrangement in substitution for the prescribed body.
- (2) Nothing that takes effect under subclause (1)—
- (a) constitutes a breach of, or default under, an Act or other law, or constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (b) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy,
- and subclause (1) may have effect despite any other Act or law.
- (3) An amendment effected to another Act by this Act does not affect a person's status as a contributor under the *Superannuation Act 1988* (as it may exist immediately before the commencement of this Act).



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#### 4—Interpretative provision

- (1) The Governor may, by proclamation, direct that a reference in any instrument (including a statutory instrument) or a contract, agreement or other document to a prescribed body, or other specified agency, instrumentality or body, will have effect as if it were a reference to an employing authority under a relevant Act, the Minister to whom the administration of a relevant Act is committed, or some other person or body designated by the Governor.
- (2) A proclamation under subclause (1) may effect a transfer of functions or powers.

#### 5—Related matters

- (1) A notice in force under section 51 of the *Children's Services Act 1985* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (2) A notice in force under section 28 of the *Institute of Medical and Veterinary Science Act 1982* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (3) A notice in force under section 61 of the *South Australian Health Commission Act 1976* immediately before the commencement of this clause will continue to have effect for the purposes of that section, as amended by this Act.
- (4) A notice in force under section 13(6) of the *South Australian Motor Sport Act 1984* immediately before the commencement of this clause will continue to have effect after that commencement but may, pursuant to this subclause, be varied from time to time, or revoked, by the Minister to whom the administration of that Act is committed.
- (5) The fact that a person becomes an employer in his or her capacity as an employing authority under an Act amended by this Act does not affect the status of any body or person as an employer of public employees for the purposes of the *Fair Work Act 1994* (unless or until relevant regulations are made under the provisions of that Act).

#### 6—Other provisions

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Act.

***Statutes Amendment (Arts Agencies Governance and Other Matters) Act 2010,  
Sch 1 Pt 9—Transitional provisions***

**3—Membership of board under *Adelaide Festival Corporation Act 1998***

- (1) In this clause—  
*principal Act* means the *Adelaide Festival Corporation Act 1998*.
- (2) A member of the board (within the meaning of the principal Act) holding office immediately before the commencement of this clause, will, on that commencement, continue in office—
  - (a) for the balance of that term of office; and
  - (b) on such other conditions as if the principal Act as amended by Part 3 of this Act had been in force when he or she was appointed or last re-appointed a member of the board and that appointment had been made under the principal Act as so amended.
- (3) A member continues in office by virtue of subclause (2) despite the fact that, for some or all of the duration of the balance of that term of office, 1 or more of the provisions of section 8 of the principal Act as amended by Part 3 of this Act (relating to the composition of the board) may not be complied with, and, in that case, those provisions will not apply for that duration.

**13—Names, titles and logos declared under *Adelaide Festival Corporation Act 1998***

- (1) A name declared by the Minister by notice in the Gazette under section 22 of the *Adelaide Festival Corporation Act 1998* and in force immediately before the commencement of Part 3 section 28 of this Act will, on that commencement, be taken to be an official title declared under section 22 of the Act as amended by Part 3 section 28 of this Act.
- (2) A name or title declared by the Minister by notice in the Gazette under section 23 of the *Adelaide Festival Corporation Act 1998* and in force immediately before the commencement of Part 3 section 28 of this Act will, on that commencement, be taken to be an official title declared under section 22 of the Act as amended by Part 3 section 28 of this Act.
- (3) A logo declared by the Minister by notice in the Gazette under section 23 of the *Adelaide Festival Corporation Act 1998* and in force immediately before the commencement of Part 3 section 28 of this Act will, on that commencement, be taken to be a logo declared under section 22 of the Act as amended by Part 3 section 28 of this Act.

**Historical versions**

1.4.2007

1.2.2010