

SOUTH AUSTRALIA

SOUTH AUSTRALIAN COUNTRY ARTS TRUST ACT 1992

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 January 1996.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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SOUTH AUSTRALIAN COUNTRY ARTS TRUST ACT 1992

being

South Australian Country Arts Trust Act 1992 No. 57 of 1992
[Assented to 29 October 1992]¹

as amended by

South Australian Country Arts Trust (Touring Programmes) Amendment Act 1994 No. 64 of 1994 [Assented to 3 November 1994]

South Australian Country Arts Trust (Review) Amendment Act 1995 No. 78 of 1995 [Assented to 23 November 1995]²

¹ Came into operation (except ss. 4-19, 20(5)-(7), 21(1)(a), (b), 21(3), 22-29 and Sched.) 26 November 1992; remainder of Act came into operation 1 January 1993: *Gaz.* 26 November 1992, p. 1622.

² Came into operation 1 January 1996: *Gaz.* 21 December 1995, p. 1750.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to establish the South Australian Country Arts Trust and Country Arts Boards and define their functions and powers; to repeal the Cultural Trusts Act 1976; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *South Australian Country Arts Trust Act 1992*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

"**area**", in relation to a Country Arts Board, means that part of the State in relation to which the Board is established;

"**Country Arts Board**" means a Country Arts Board established by Part 3; and "**Board**" has a corresponding meaning;

"**local resident**", in relation to a Country Arts Board, means a person whose principal place of residence is situated in a part of the State in relation to which the Board is established;

"**the Trust**" means the *South Australian Country Arts Trust* established by Part 2.

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**PART 2
THE SOUTH AUSTRALIAN COUNTRY ARTS TRUST**

Establishment of Trust

4. (1) The *South Australian Country Arts Trust* is established.

(2) The Trust is a body corporate with full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(3) The Trust is an instrumentality of the Crown and holds its property on behalf of the Crown.

(4) Where an apparently genuine document purports to bear the common seal of the Trust, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Trust was duly affixed to that document.

Membership of Trust

5. (1) The Trust is to consist of nine trustees appointed by the Minister, of whom—

(a) one will be appointed by the Minister to be the presiding trustee of the Trust; and

(b) four will be the presiding members of the Country Arts Boards (*ex officio*); and

(c) one will be a person nominated by the Local Government Association of South Australia; and

(d) three will be persons who together will provide business, entrepreneurial and arts skills.

(2) At least two trustees must be women and at least two trustees must be men.

(3) The Minister may, on such terms and conditions as the Minister thinks fit, appoint a suitable person to be the proxy of a member of the Trust appointed under subsection (1)(a) or (d).

(3a) Each presiding member of a Country Arts Board will have as his or her proxy another member of the Board nominated by the Board for the purposes of this section.

(4) The Local Government Association of South Australia may, on such terms and conditions as it thinks fit, appoint a suitable person to be the proxy of a member of the Trust appointed on the nomination of the Association.

Terms and conditions of office

6. (1) A trustee (other than a trustee who holds office *ex officio*) will be appointed for such term—

(a) in the case of the presiding trustee—not exceeding three years; or

(b) in any other case—not exceeding two years,

as the Minister specifies in the instrument of appointment.

(2) A trustee is, on the expiration of his or her term of office, eligible for reappointment but a person cannot hold office as a trustee for more than six consecutive years.

(3) A trustee is entitled to such allowances and expenses as the Minister may determine.

- (4) The Minister may remove a trustee from office—
- (a) for misconduct; or
 - (b) for mental or physical incapacity to carry out satisfactorily the duties of his or her office; or
 - (c) for failure to carry out satisfactorily the duties of his or her office.

(5) The office of a trustee becomes vacant if the trustee—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice addressed to the Minister; or
- (d) being a trustee appointed by virtue of holding office as the presiding member of a Country Arts Board, ceases to hold that office; or
- (e) is removed from office by the Minister under subsection (4).

(6) On the office of a trustee becoming vacant, a person may be appointed in accordance with this Act to the vacant office.

(7) A trustee (other than a trustee who holds office *ex officio*) appointed to fill a casual vacancy will be appointed for the balance of the term of his or her predecessor.

Procedures of Trust

7. (1) A meeting of the Trust will be chaired by the presiding trustee or, in his or her absence, by a trustee chosen by those present at the meeting.

(2) A quorum of the Trust consists of five members, and no business may be transacted at a meeting of the Trust unless a quorum is present.

(3) Subject to subsection (2), the Trust may act notwithstanding vacancies in its membership.

(4) Each trustee present at a meeting of the Trust whether personally or by proxy is, subject to section 8, entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(5) A decision carried by a majority of the votes cast by the trustees present and voting (whether personally or by proxy) at a meeting is a decision of the Trust.

(6) The Trust must cause accurate minutes to be kept of its proceedings at meetings.

(7) The procedure for the calling of meetings of the Trust and for the conduct of business at meetings will, subject to this Act, be as determined by the Trust.

Conflict of interest

8. (1) A trustee who has a direct or indirect pecuniary interest in a matter decided or under consideration by the Trust—

- (a) must disclose the nature of the interest to the Trust; and

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- (b) must not take part in any discussion by the Trust relating to that matter; and
- (c) must not vote in relation to that matter whether personally or by proxy; and
- (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5 000 or imprisonment for one year.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the Trust.

Functions and powers of Trust

9. (1) The Trust has the following functions:

- (a) to advise the Minister on matters of policy related to country arts; and
- (b) to act as an advocate for country arts; and
- (c) to manage the development of country arts; and
- (d) to establish and maintain an information service for country arts; and
- (e) to develop and manage programmes for the touring of country arts activities within the State or within and outside the State; and
- (f) to provide, manage and control premises and facilities for country arts; and
- (g) to formulate, in consultation with the Country Arts Boards, and to keep under review, guidelines for the performance by Country Arts Boards of functions and powers delegated by the Trust to the Boards under section 12 and for the application of funds provided to Country Arts Boards by the Trust for the performance of such functions and powers; and
- (h) to evaluate and be responsible for the financial and artistic performance of country arts activities funded by the Trust; and
- (i) to perform such other functions as may be prescribed by or under this Act; and
- (j) to perform any functions that are incidental to the foregoing.

(2) For the purpose of carrying out its functions the Trust may, within or outside the State—

- (a) subject to this Act, enter into contracts, agreements or arrangements;
- (b) subject to this Act, acquire, hold, deal with, or sell or dispose of real or personal property;
- (c) engage in any business or activity that promotes country arts;
- (d) make grants of money, subject to such conditions as the Trust considers appropriate, to any person or body for the purposes of country arts activities;

- (e) provide ticketing services for productions or events of any kind staged or promoted by the Trust or any other person;
- (f) provide meals, refreshments and catering services;
- (g) exercise any other power that is necessary for, or incidental to, the performance of its functions.

Trust subject to direction and control of Minister

10. The Trust is subject to the general direction and control of the Minister.

Committees

11. (1) The Trust may establish committees (which may, but need not, consist of or include trustees) to advise or assist the Trust or perform any of its functions or powers.

(2) The functions and procedures of a committee established under subsection (1) will be as determined by the Trust.

Delegation

12. (1) The Trust may delegate any of its functions or powers (except this power of delegation) under this Act—

- (a) to a trustee of the Trust; or
- (b) to a committee established by the Trust; or
- (c) to a Country Arts Board; or
- (d) to a particular person or body; or
- (e) to the person for the time being occupying a particular office or 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 Trust to act in any matter; and
- (d) is revocable at will by the Trust.

Staff

13. The Trust may employ, on terms and conditions fixed by the Trust, such persons as it considers necessary or desirable for the proper performance of the functions and powers conferred on the Trust and the Country Arts Boards by or under this Act.

Power to borrow money

14. (1) The Trust may, with the consent of the Treasurer, borrow money at interest from any person upon such security (if any) by way of mortgage or charge over any of the assets of the Trust as the Trust may think fit to grant.

(2) The Treasurer may, on such terms and conditions as the Treasurer thinks fit, guarantee the repayment of any money (together with interest) borrowed by the Trust under this section.

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(3) Any money required to be paid in satisfaction of a guarantee given pursuant to subsection (2) will be paid out of the Consolidated Account which is accordingly appropriated to the necessary extent.

Power to invest

15. The Trust may lodge on deposit with the Treasurer or invest in any other manner approved of by the Treasurer any money of the Trust not immediately required by the Trust.

Gifts, etc.

16. (1) The Trust may accept—

- (a) grants, conveyances, transfers and leases of land whether from the Crown or any instrumentality of the Crown or any other person; and
- (b) rights to the use, control, management or occupation of land; and
- (c) gifts of personal property of any kind to be used or applied by it for the purposes of this Act.

(2) Notwithstanding anything in the *Stamp Duties Act 1923* no stamp duty is payable on any instrument by which land or an interest in or a right over land is granted or assured to, or vested in, the Trust or on any contract or instrument executed by the Trust for the purposes of disposing of any property.

Budget

17. (1) As soon as practicable after the commencement of this Act, the Trust must submit to the Minister a budget showing estimates of its receipts and payments over the balance of the financial year within which the budget is presented, and thereafter the Trust must, before the commencement of each succeeding financial year, submit to the Minister a budget showing estimates of its receipts and payments for that succeeding financial year.

(2) The Minister may approve, with or without amendment, a budget submitted under this section.

(3) The Trust must not, without the consent of the Minister, make any expenditure that is not authorised by an approved budget.

(4) In this section—

"**approved budget**" means a budget that has been approved of by the Minister or a budget that, having been amended, has been approved of by the Minister.

Accounts

18. (1) The Trust must cause proper accounts to be kept of its financial affairs.

(2) The Auditor-General may at any time, and must at least once in each year, audit the accounts of the Trust.

Annual report

19. (1) The Trust must, on or before 30 September in each year, submit to the Minister a report on its activities during the period of 12 months that ended on the preceding 30 June.

(2) The report must incorporate the audited statement of accounts for the Trust in relation to the relevant period.

(3) The Minister must, within 12 sitting days of receiving a report under subsection (1), cause a copy of the report to be laid before each House of Parliament.

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**PART 3
THE COUNTRY ARTS BOARDS**

Establishment of Country Arts Boards

20. (1) The following Country Arts Boards are established:

Central Country Arts Board
Riverland/Mallee Country Arts Board
South East Country Arts Board
Western Country Arts Board.

(2) Each Country Arts Board is established in relation to a part of the State defined by proclamation.

(3) The Governor may, by proclamation, define a part of the State in relation to which a Country Arts Board is established.

(4) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subsection (3).

(5) A Country Arts Board is a body corporate with full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(6) A Country Arts Board is an instrumentality of the Crown and holds its property on behalf of the Crown.

(7) Where an apparently genuine document purports to bear the common seal of a Country Arts Board, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to that document.

Membership of Country Arts Boards

21. (1) A Country Arts Board is to consist of not less than five and not more than eight members appointed by the Minister, of whom—

- (a) one will be appointed by the Minister to be the presiding member of the Board; and
- (b) one will be a person nominated jointly by the municipal or district councils whose areas are in the area of the Board, unless the councils are unable to agree as to the person to be nominated, in which case, one will be a person selected from persons nominated by each council; and
- (c) between three and six will be persons nominated by local residents and persons of a prescribed class in accordance with procedures prescribed by the regulations.

(1a) The Minister will from time to time determine the number of persons to be nominated under subsection (1)(c).

(2) A person is not eligible for nomination as a member of a Country Arts Board unless the person—

- (a) is a local resident; or
- (b) is resident outside the State in an area defined in the regulations that is adjacent to the area of the Board.

(3) At least two members of each Country Arts Board must be women and at least two members must be men.

(4) Regulations prescribing a class of persons who may make nominations for the purposes of subsection (1)(c) may prescribe a specified body or class of bodies with a membership or memberships wholly or partly of persons resident outside the State in an area defined in the regulations that is adjacent to the area of the Board.

Terms and conditions of office

22. (1) A member of a Country Arts Board will be appointed for such term—

(a) in the case of the presiding member—not exceeding three years; or

(b) in any other case—not exceeding two years,

as the Minister specifies in the instrument of appointment.

(2) A member of a Country Arts Board is, on the expiration of his or her term of office, eligible for reappointment but a person cannot hold office as a member of a Board for more than six consecutive years.

(3) A member of a Country Arts Board is entitled to such allowances and expenses as the Minister may determine.

(4) The Minister may remove a member of a Country Arts Board from office—

(a) for misconduct; or

(b) for mental or physical incapacity to carry out satisfactorily the duties of his or her office;
or

(c) for failure to carry out satisfactorily the duties of his or her office.

(5) The office of a member of a Country Arts Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice addressed to the Minister; or

(d) ceases to be—

(A) a local resident; or

(B) resident outside the State in an area defined in the regulations that is adjacent to the area of the Board; or

(e) is removed from office by the Minister under subsection (4).

(6) On the office of a member of a Country Arts Board becoming vacant, the Minister may appoint a person to the vacant office.

(7) A member of a Country Arts Board appointed to fill a casual vacancy will be appointed for the balance of the term of his or her predecessor.

Procedures of Boards

23. (1) A meeting of a Country Arts Board will be chaired by the presiding member or, in his or her absence, by a member of the Board chosen by those present at the meeting.

(2) A number of members of a Country Arts Board equal to half the total number of members for the time being appointed to the Board, plus one, constitutes a quorum of the Board, and no business may be transacted at a meeting of the Board unless a quorum is present.

(3) Subject to subsection (2), a Country Arts Board may act notwithstanding vacancies in its membership.

(4) Each member of a Country Arts Board present at a meeting of the Board is, subject to section 24, entitled to one vote on a matter arising for decision at the meeting, but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.

(5) A decision carried by a majority of the votes cast by the members of a Country Arts Board present and voting at a meeting is a decision of the Board.

(6) A Country Arts Board must cause accurate minutes to be kept of its proceedings at meetings.

(7) The procedure for the calling of meetings of a Country Arts Board and for the conduct of business at meetings will, subject to this Act, be as determined by the Board.

Conflict of interest

24. (1) A member of a Country Arts Board who has a direct or indirect pecuniary interest in a matter decided or under consideration by the Board—

- (a) must disclose the nature of the interest to the Board; and
- (b) must not take part in any discussion by the Board relating to that matter; and
- (c) must not vote in relation to that matter; and
- (d) must be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5 000 or imprisonment for one year.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the Board.

Functions and powers of Boards

25. (1) A Country Arts Board has such functions and powers as are delegated to it by the Trust under section 12 or prescribed under this Act.

(2) In performing any such delegated functions or powers a Country Arts Board must comply with any guidelines formulated by the Trust under section 9(1)(g).

(3) Where a Country Arts Board acquires works of art under this Act, the Board will not be subject to any control or direction by the Trust concerning the disposal or care, control or management of such property.

Committees

26. (1) A Country Arts Board may establish committees (which may, but need not, consist of or include members of the Board) to advise or assist the Board or perform any of its functions or powers.

(2) The functions and procedures of a committee established under subsection (1) will be as determined by the Board.

Delegation

27. (1) A Country Arts Board may, with the approval of the Trust, delegate any of its functions or powers (except this power of delegation) under this Act to a committee established by the Board.

(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 Board to act in any matter; and

(d) is revocable at will by the Board.

Budget

28. (1) As soon as practicable after the commencement of this Act, a Country Arts Board must submit to the Trust a budget showing its estimates of receipts and payments over the balance of the financial year within which the budget is presented, and thereafter a Country Arts Board must, before the commencement of each succeeding financial year, submit to the Trust a budget showing its estimates of receipts and payments for that succeeding financial year.

(2) The Trust may approve, with or without amendment, a budget submitted under this section.

(3) A Country Arts Board must not, without the consent of the Trust, make any expenditure that is not authorised by an approved budget.

(4) In this section—

"approved budget" means a budget that has been approved of by the Trust or a budget that, having been amended, has been approved of by the Trust.

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**PART 4
MISCELLANEOUS**

Protection from personal liability

29. (1) No personal liability attaches to—

- (a) a member of the Trust; or
- (b) a member of the Trust's staff; or
- (c) a member of a Country Arts Board; or
- (d) any person to whom the Trust has delegated functions or powers under section 12,

for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person mentioned in that subsection lies instead against the Crown.

Regulations

30. (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may, for example—

- (a) prescribe the functions, powers or duties conferred or imposed on Country Arts Boards; and
- (b) regulate the conduct of persons on the Trust's property; and
- (c) provide for and prescribe any matter relating to—
 - (i) the keeping of financial accounts by Country Arts Boards;
 - (ii) the making of periodic reports by Country Arts Boards; and
- (d) prescribe fines not exceeding \$2 500 for contravention or failure to comply with a regulation.

(3) A regulation made under this section may apply to Country Arts Boards generally or to a particular Country Arts Board or class of Country Arts Boards.

SCHEDULE

Repeal and Transitional Provisions

PART 1

REPEAL

Repeal of Cultural Trusts Act 1976

1. The *Cultural Trusts Act 1976* is repealed.

PART 2

TRANSITIONAL PROVISIONS

Transfer of property, etc. of Cultural Trusts, etc. to Country Arts Trust

2. (1) Subject to this clause, on the repeal of the *Cultural Trusts Act 1976*, all real and personal property and rights and liabilities of the bodies specified in column 2 of the table below are transferred to and vested in the Trust.

(2) Transfer to the Trust of the land comprised in Certificate of Title Register Book Volume 3941 Folio 150 is subject to the prior written consent of the Arts Council of South Australia Incorporated.

(3) The Registrar-General will, on application by the Trust and on being furnished with such duplicate certificates of title or other documents as the Registrar-General may require, register the Trust as the proprietor of interests in land vested in the Trust by this Act.

(4) No registration fee is payable in respect of an application under subsection (3).

(5) On the repeal of the *Cultural Trusts Act 1976*, all works of art owned by a body specified in column 2 of the table below immediately before the repeal of that Act are transferred to and vested in the body specified in column 1 opposite.

(6) A Country Arts Board—

(a) will not be subject to any control or direction by the Trust concerning the disposal or care, control or management of any property vested in the Board by subclause (5);

(b) may sell or otherwise dispose of such property.

Transfer of staff of Cultural Trusts, etc. to Country Arts Trust

3. On the repeal of the *Cultural Trusts Act 1976*, all employees of the bodies specified in column 2 of the table below become, without loss of continuity of service or accrued or accruing benefits in respect of employment, employees of the Trust.

TABLE

| <i>Column 1</i> | <i>Column 2</i> |
|-----------------------------------|---|
| Central Region Country Arts Board | Central Region Cultural Authority Incorporated. |
| Central Region Country Arts Board | Regional Cultural Council Incorporated. |
| Eyre Peninsula Country Arts Board | Eyre Peninsula Cultural Trust. |
| Northern Country Arts Board | Northern Cultural Trust. |
| Riverland Country Arts Board | Riverland Cultural Trust. |
| South East Country Arts Board | South East Cultural Trust. |

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APPENDIX**LEGISLATIVE HISTORY****Transitional Provisions**

(Transitional provision from South Australian Country Arts Trust (Review) Amendment Act 1995, s. 10)

10. (1) In this section—

"former Board" means a Country Arts Board in existence immediately before the commencement of section 6 of this Act (and so abolished by this Act).

(2) A member of a former Board ceases to hold office on the commencement of this section.

(3) However, despite subsection (2) and the provisions of the principal Act (as amended by this Act), the Minister may, on the commencement of this section, appoint a person who was a member of a former Board by virtue of a nomination under section 21(1)(c) of the principal Act as a member of a Country Arts Board established by amendment to the principal Act by this Act as if the person had been renominated after the commencement of this Act.

(4) The Governor may, by proclamation, vest assets, rights or liabilities (whether vested or contingent) of a former Board in a Country Arts Board established by amendment to the principal Act by this Act.

(5) The Governor may, by further proclamation, if it appears necessary or appropriate to do so, vary a proclamation under subsection (4) (and a proclamation under this subsection will, if the proclamation so provides, be taken to have had effect from the making of the original proclamation under subsection (4)).

(6) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets, rights or liabilities, or documents relating to such transactions, must, on application under this section, register or record in an appropriate manner a vesting under this section.

(7) The Governor may, by proclamation, make other provisions of a saving or transitional nature consequent on the enactment of this Act.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

| | |
|----------------------------|---|
| Section 5(1) - (3): | substituted by 78, 1995, s. 3 |
| Section 5(3a): | inserted by 78, 1995, s. 3 |
| Section 6(1): | amended by 78, 1995, s. 4(a) |
| Section 6(5): | amended by 78, 1995, s. 4(b) |
| Section 6(7): | amended by 78, 1995, s. 4(c) |
| Section 7(2): | substituted by 78, 1995, s. 5 |
| Section 8(1): | amended by 78, 1995, s. 9 (Sched.) |
| Section 9(1): | amended by 64, 1994, s. 2 |
| Section 20(1): | substituted by 78, 1995, s. 6 |
| Section 21(1): | amended by 78, 1995, s. 7(a), (b) |
| Section 21(1a): | inserted by 78, 1995, s. 7(c) |
| Section 21(3): | substituted by 78, 1995, s. 7(d) |
| Section 24(1): | amended by 78, 1995, s. 9 (Sched.) |
| Section 27(1): | amended by 78, 1995, s. 8 |
| Section 30(2): | amended by 78, 1995, s. 9 (Sched.) |