

South Australia

State Theatre Company of South Australia Act 1972

An Act to establish the South Australian Theatre Company, to constitute a Board of Governors thereof and for matters incidental thereto.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *State Theatre Company of South Australia Act 1972*.

4—Interpretation

In this Act, unless the contrary intention appears—

financial year means any period of twelve months concluding on the thirtieth day of June in a year;

governor means a governor referred to in section 6 of this Act and includes such a governor for the time being appointed chairman of the Board;

subscriber means a person for the time being a subscriber to the Company within the meaning of the regulations;

the Board means the Board of Governors comprised of the governors appointed or elected under section 6 of this Act;

the Company means the State Theatre Company of South Australia.

Part 2—The Company and the Board

Division 1—General

5—The Company

- (1) There shall be a body entitled the *State Theatre Company of South Australia*.
- (2) The Company—
 - (a) shall be a body corporate with perpetual succession and a common seal; and
 - (b) subject to this Act, shall be capable of acquiring, taking or letting out on lease, holding, selling and otherwise disposing of real and personal property; and
 - (c) may in its corporate name and capacity sue and be sued; and

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- (d) shall have the powers, duties, functions and authorities conferred, imposed or prescribed by or under this Act.
 - (3) Where a document purporting to bear the common seal of the Company is produced before any court or person acting judicially the court or the person, as the case may be, shall, unless the contrary is proved, presume—
 - (a) that the document purporting to bear the common seal of the Company bears the common seal of the Company; and
 - (b) that the common seal was duly affixed and properly attested to.

6—The Board of Governors

- (1) The powers, duties, functions and authorities of the Company conferred, imposed or prescribed by or under this Act may be exercised, performed and discharged by the Board of Governors.
- (2) Subject to this section the Board shall consist of eight governors—
 - (a) of whom five shall be persons appointed as such by the Governor; and
 - (b) of whom two shall be subscribers elected, in accordance with this Act, by the subscribers; and
 - (c) of whom one shall be an employee of the Company elected, in accordance with this Act, by the employees of the Company.
- (3) From amongst the persons referred to in paragraph (a) of subsection (2) of this section the Governor may appoint a governor to be chairman of the Board.
- (6) Every governor appointed by the Governor shall, subject to this Act, hold office as such until the day expressed in the instrument of his appointment (not being more than three years from the day on which he was last appointed) as being the day on which he shall cease to hold office, but such a governor appointed to fill a casual vacancy in the office of a governor shall hold office only for the unexpired portion of the term of office of the governor in whose place he was appointed.
- (7) A governor elected by subscribers shall, subject to this Act, hold office as such until the conclusion of the next election (not being a by-election) of governors by the subscribers.
- (8) Where a casual vacancy occurs in the office of a governor elected by the subscribers and there is not to be an election under subsection (9) of this section within six months of the occurrence of the vacancy, a governor shall be elected by the subscribers, at a by-election, to fill the vacancy.
- (9) Where a period determined by the Board of not less than two years and not more than two years and six months has elapsed since the last election (not being a by-election) of governors by the subscribers, an election of governors by the subscribers shall be held.
- (10) A governor elected by the employees of the Company shall, subject to this Act, hold office as such until the next election of a governor by the employees.
- (11) Where—
 - (a) a casual vacancy occurs in the office of the governor elected by the employees of the Company; or

- (b) a period determined by the Board of not less than twelve months and not more than eighteen months has elapsed since the last election of a governor by the employees of the Company,

an election of a governor by the employees of the Company shall be held.

- (12) An appointed governor shall, subject to this Act, be eligible for re-appointment and an elected governor shall, subject to this Act, be eligible for re-election.

7—Acceptance of office as a governor not to be a bar to the holding of any other office

Notwithstanding any other Act or law, a person shall not be disqualified by appointment as a governor from holding office as a governor and also any other office or place or from accepting or retaining any fees or other remuneration provided for by or under this Act, or otherwise, in respect of his service as a governor.

8—Removal from office of governor

The Governor may, by notice in writing served on a governor, remove the governor from office on grounds of misconduct or incapacity to perform his duties and functions as a governor.

9—Casual vacancies

The office of a governor shall become vacant if—

- (a) he dies; or
- (b) he resigns by written notice given to the Minister; or
- (c) he is removed from office by the Governor pursuant to section 8 of this Act; or
- (d) he is absent without leave of the Minister from three consecutive meetings of the Board; or
- (e) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or compounds with his creditors for less than one hundred cents in the dollar; or
- (ea) being a governor elected by subscribers, he ceases to be a subscriber; or
- (f) being a governor elected by the employees of the Company, he ceases to be an employee of the Company; or
- (g) he is convicted of any offence and receives notice in writing from the Minister discharging him from office on the ground of that conviction.

10—Procedures of the Board

- (1) The common seal of the Company shall not be affixed to any instrument except in pursuance of a resolution of the Board.
- (2) Any instrument executed in pursuance of such a resolution shall be attested by the signature of any two governors.
- (3) The procedure for the calling of meetings of the Board and for the conduct of business at such meetings shall, subject to this Act, be as determined by the Board.

- (4) Any four governors shall constitute a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Company and shall have and may discharge all the powers, duties and functions of the Company.
- (5) A decision carried by the majority of the votes cast by the governors present at a meeting of the Board shall be the decision of the Board.
- (6) The Board shall cause accurate minutes to be kept of its proceedings at meetings.

11—Remuneration of governors

A governor shall, if the Governor thinks fit, be paid such fees or other remuneration as may from time to time be fixed by the Governor and shall be entitled to receive such travelling and other expenses as are from time to time approved by the Minister.

12—Delegation of powers to governors

- (1) The Board may by instrument over its common seal delegate to not less than two governors any of the powers and functions conferred on the Board by or under this Act (except this power of delegation) so that the delegated powers and functions may be exercised by the delegates with respect to the matters or matters of a class or in relation to a locality specified in the instrument of delegation.
- (2) A delegation under subsection (1) of this section is revocable in writing at will and no delegation shall prevent the exercise of any power or function by the Board conferred on it by or under this Act.
- (3) Notwithstanding anything in this Act, where the delegates are unanimous in the exercise or performance of any power or function delegated under subsection (1) of this section the exercise or performance of that power or function by the delegates shall for the purposes of this Act or of any proceedings under this Act be deemed to be an exercise or performance of that power or function by the Board.

13—Chairman and presiding governor

- (1) The chairman of the Board shall preside at all meetings of the Board at which he is present and in addition to a deliberative vote, shall, in the event of equality of votes, have a second or casting vote.
- (2) In the absence of the chairman of the Board from any meeting of the Board the governors present shall, from amongst their own number, elect a governor to preside at that meeting and at that meeting the Governor so elected shall have and may exercise the powers and functions conferred on the chairman of the Board by this section.

14—Validity of act etc of board

No act, proceedings or determination of the Board shall be invalid on the ground only of any vacancy in the office of any governor or of any defect in the appointment of any governor.

15—Governors not, as such, subject to Public Service Act

A governor shall not, as such, be subject to the *Public Service Act 1967*, as amended, but this section does not affect the rights, duties and obligations under that Act of any governor who is otherwise an officer in the public service of the State.

16—Declaration of interest

- (1) A governor who has any direct or indirect financial interest in a contract, or proposed contract, made by, or in contemplation of, the Company—
 - (a) shall, as soon as he becomes aware of the contract or proposed contract, disclose the nature of his interest to the secretary of the Board; and
 - (b) shall not take part in any deliberations or decision of the Board with respect to that contract.

Penalty: Five hundred dollars.

- (2) Subsection (1) of this section does not apply in respect of a financial interest that exists only by virtue of the fact—
 - (a) that the governor is an employee of the Company; or
 - (b) that the governor is a subscriber; or
 - (c) that the governor has contracted or may contract with the Company to attend Company performances.
- (3) Where a governor discloses a financial interest in a contract or proposed contract in accordance with this section, or his financial interest in a contract or proposed contract is not such as need be disclosed under this section—
 - (a) the contract is not liable to be avoided by the Company on any ground arising from the fiduciary relationship between the governor and the Company; and
 - (b) the governor is not liable to account to the Company for profits derived from the contract.

Division 2—Powers and functions etc of Company

17—Company to absorb former company

- (1) In this section the *former company* means the South Australian Theatre Company Incorporated being an association incorporated under the *Associations Incorporation Act 1956*, as amended.
- (2) On the day of commencement of this Act the former company shall for all purposes be wound up and dissolved and thereafter all claims, actions or proceedings which—
 - (a) but for that dissolution, could have been made or commenced by or against the former company may be made or commenced by or against the Company in all respects as if the former company had not been dissolved and the Company were the former company; and
 - (b) before that dissolution had been made or commenced by or against the former company may be continued by or against the Company in all respects as if the former company had not been dissolved and the Company were the former company,

and the name of the Company shall be substituted for the name of the former company in any such claim, action or proceeding.

- (3) All real and personal property vested in, belonging to or under the control of the former company shall on and from the day of commencement of this Act cease to vest in, belong to or be under the control of the former company and vest in, belong to or be under the control of the Company.

18—Objects, powers etc of Company

- (1) Subject to this Act, the Company may—
- (a) present, produce, manage and conduct theatrical performances, operas, plays, dramas, ballets and entertainments of any kind as may in its opinion tend to promote the art of theatre; and
 - (b) promote or commission the writing of plays or dramas, the scoring and writing of operas, the scoring, writing and choreography of ballets and other works for theatrical performance; and
 - (c) promote the training of all persons concerned in the production, presentation or performance of theatrical presentations; and
 - (d) assist financially or otherwise in the presentation, production, management or conduct of any art of the theatre in this State; and
 - (e) do all things necessary or expedient to promote public interest and participation in the art of the theatre; and
 - (ea) establish and maintain a collection of objects of public interest relating to the past and present practice of the performing arts in this State and, for that purpose, purchase, hire, accept by way of gift or loan, or otherwise acquire any such objects; and
 - (f) establish and conduct schools, courses, lectures, seminars and discussions on the art of the theatre; and
 - (g) enter into contracts or agreements with artists, entertainers and performers or employ such persons; and
 - (h) employ writers, composers, choreographers, designers and directors; and
 - (i) purchase and install any fittings or equipment in any theatre; and
 - (j) make charges for admission to any theatrical performance; and
 - (k) grant or dispose of rights to televise, broadcast or record any theatrical performances undertaken under its auspices; and
 - (l) enter into agreement or arrangements with any other person or body for the promotion of any theatrical activity; and
 - (m) acquire patents to use any inventions or devices that may be used in connection with any theatrical activity and dispose of such patents or licence for the use of any such inventions or devices; and
 - (n) do all things which in its opinion are necessary for or incidental to the exercise and performance of any of its powers or to the fulfilment of any of its objects.

19—Company may make use of services of employees of public service

The Company may, with the approval of the Minister and the consent of the Minister controlling any Department of the public service of the State and on such terms as may be mutually arranged make use of the services of any of the officers or employees of that Department.

Part 3—Employees of the Company

20—Employment of employees

- (1) For the purposes of this Act the Board may employ such persons as employees of the Company as it thinks necessary.
- (2) The terms and conditions of employment of the employees of the Company shall be as determined by the Board.
- (3) Without limiting the generality of subsection (2) of this section, the Board may, with the approval of the Minister, determine that, for the purposes of the accrual of, or the payment of a lump sum in lieu of the grant of, long service leave or for the purposes of the accrual of leave on account of illness, previous service of an employee of the Company with an employer other than the Company for the purposes and to the extent approved of by the Minister shall be regarded as service as an employee of the Company.
- (4) For the purposes of this section the Company may enter into an arrangement or supplementary arrangement of a kind contemplated by section 6 of the *Superannuation Act 1969*, as amended, with the South Australian Superannuation Board.

21—Artistic director of the Company

- (1) Subject to this section the Board shall appoint a suitably qualified person to be the artistic director of the Company and upon that appointment the artistic director shall become an employee of the Company.
- (2) The terms and conditions of employment of the artistic director shall be as determined by the Board and approved of by the Minister.

22—Secretary to the Board

- (1) The Board shall appoint a person to be the secretary to the Board and upon that appointment that person shall become an employee of the Company.
- (2) The secretary to the Board shall have and may exercise, perform and carry out such powers, functions and duties as are conferred on him by or under this Act or as are directed to be exercised, performed or carried out by the Board.

Part 5—Financial

26—Company to keep proper accounts

- (1) The Company shall keep proper accounts showing accurately and in detail all its financial transactions, assets and liabilities.

- (2) The Auditor-General must, in respect of each financial year of the Company, audit the accounts of the Company.

27—Power to borrow

- (1) The Company may with the consent of the Treasurer, for the purposes of exercising or performing its powers and functions under this Act, 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 Company as the Company may think fit to grant.
- (2) The Treasurer may upon such terms and conditions as he thinks fit guarantee the repayment of any moneys (together with interest thereon) borrowed by the Company under this section.
- (3) Any moneys required to be paid in satisfaction of a guarantee given pursuant to subsection (2) of this section may be paid out of the general revenue of the State which is hereby to the necessary extent appropriated accordingly.

28—Funds of the Company

- (1) The moneys required by the Company for the purposes of the exercise and performance of its powers and functions under this Act shall be—
 - (a) all moneys received by the Company in the exercise and performance of its powers or functions; and
 - (b) all moneys borrowed by the Company pursuant to section 27 of this Act; and
 - (c) all moneys being gifts to the Company or derived from the disposition by the Company of gifts to the Company; and
 - (d) all moneys paid to the Company by way of grants by the Treasurer out of moneys to be provided by Parliament for the purpose.
- (2) Such of the moneys of the Company as are not immediately required by the Company may be lodged on deposit with the Treasurer or invested in any other manner approved of by the Treasurer.

29—Budget

- (1) As soon as practicable after the commencement of this Act the Company shall present to the Minister a budget showing its estimates of revenue and expenditure over the balance of the financial year within which the budget is presented and thereafter the Company shall before the commencement of each succeeding financial year present to the Minister a budget showing its estimates of its revenue and expenditure for that succeeding financial year.
- (2) The Minister may approve of any budget presented to him pursuant to subsection (1) of this section or may direct or allow the Company to amend a budget before so approving of the budget.
- (3) The Company shall not, without the consent of the Minister, incur 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.

Part 6—Miscellaneous

30—Protection of governors

No action, suit or proceeding shall be brought or maintained against any governor in respect of any act or thing done or omitted to be done in his capacity as such in the exercise or purported exercise in good faith of his powers or functions under this Act.

31—Reports

- (1) As soon as practicable after the end of each financial year the Company shall present a report to the Minister on its activities during the year and setting out in a form approved by the Minister a statement as to its financial position.
- (2) The Minister shall cause every report of the Company made in accordance with subsection (1) of this section to be laid before each House of Parliament within fourteen days of his receipt thereof if Parliament is then in session or if Parliament is not then in session within fourteen days of the commencement of the next session of Parliament.

32—Gifts etc

- (1) The Company may accept—
 - (a) grants, conveyances, transfers and leases of land whether from the Crown or any instrumentality thereof or any other person; 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) Notwithstanding anything contained in the *Stamp Duties Act 1923*, as amended, no stamp duty shall be payable on any instrument by which land or any interest in or right over land is granted or assured to or vested in the Company or on any contract or instrument executed by the Company for the purpose of disposing of any property.
- (3) Notwithstanding anything contained in the *Succession Duties Act 1929*, as amended, no succession duty shall be payable in respect of any property or interest passing to the Company on or by reason of the death of any person, and any such property shall not be subject to succession duty under that Act.
- (4) Notwithstanding anything in the *Gift Duties Act 1968*, as amended, no gift duty under that Act shall be payable in respect of the gift of any real or personal property to the Company.

33—Summary procedure for offences

Proceedings for offences against this Act shall be disposed of summarily.

34—Regulations

- (1) The Governor may, on the recommendation of the Company, make such regulations as are necessary or expedient for the purposes of giving effect to the provisions or objects of this Act.

- (2) Without limiting the generality of the provisions of subsection (1) of this section, the regulations may—
- (a) provide for the disposition by the Company of any unclaimed property left in or on any premises owned or controlled by the Company; and
 - (b) prescribe the manner in which persons become, and cease to be, subscribers to the Company, provide for the payment of subscriptions by the subscribers, and make any other provision in relation to the rights and obligations of the subscribers; and
 - (c) provide for the holding of elections and by-elections for the purposes of this Act; and
 - (d) provide for and prescribe penalties, in each case, not exceeding two hundred dollars, for a contravention of or failure to comply with any provision of the regulations.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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.

Formerly

South Australian Theatre Company Act 1972

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1972	38	<i>South Australian Theatre Company Act 1972</i>	13.4.1972	1.7.1972 (<i>Gazette</i> 29.6.1972 p2690)
1979	34	<i>South Australian Theatre Company Act Amendment Act 1979</i>	15.3.1979	26.4.1979 (<i>Gazette</i> 26.4.1979 p1226)
1981	104	<i>State Theatre Company of South Australia Act Amendment Act 1981</i>	23.12.1981	7.1.1982 (<i>Gazette</i> 7.1.1982 p4)
1987	13	<i>Statutes Amendment (Finance and Audit) Act 1987</i>	9.4.1987	1.10.1987 (<i>Gazette</i> 17.9.1987 p886)
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 24 (ss 109—116)—1.4.2007 (<i>Gazette</i> 29.3.2007 p930)

Provisions amended since 3 February 1976

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3	<i>amended by 34/1979 s 3</i>	26.4.1979
	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
the Company	substituted by 34/1979 s 4(a)	26.4.1979
<i>the company of players</i>	<i>deleted by 34/1979 s 4(b)</i>	26.4.1979
Pt 2		
s 5		
s 5(1)	substituted by 34/1979 s 5	26.4.1979
s 6		

s 6(2)	amended by 34/1979 s 6(a)	26.4.1979
	amended by 104/1981 s 3	7.1.1982
s 6(4) and (5)	<i>deleted by 34/1979 s 6(b)</i>	26.4.1979
s 6(7)—(9)	substituted by 34/1979 s 6(c)	26.4.1979
s 6(10)—(12)	inserted by 34/1979 s 6(c)	26.4.1979
s 9	amended by 34/1979 s 7	26.4.1979
s 10		
s 10(4)	amended by 104/1981 s 4	7.1.1982
s 16	substituted by 34/1979 s 8	26.4.1979
s 18		
s 18(1)	amended by 34/1979 s 9	26.4.1979
<i>Pt 4</i>	<i>deleted by 34/1979 s 10</i>	26.4.1979
<i>Pt 5</i>		
s 26		
s 26(2)	substituted by 13/1987 s 10	1.10.1987
s 26(3)	<i>deleted by 13/1987 s 10</i>	1.10.1987
s 34		
s 34(2)	amended by 34/1979 s 11	26.4.1979