

South Australia

Public Corporations (Australian Children's Performing Arts Company) Regulations 2001

under the *Public Corporations Act 1993*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Public Corporations (Australian Children's Performing Arts Company) Regulations 2001*.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Public Corporations Act 1993*;

board means the board of directors established as the governing body of the subsidiary under Part 3;

director means a person appointed or holding office as a member of the board under Part 3;

Minister means the Minister for the Arts;

the subsidiary means the Australian Children's Performing Arts Company established under Part 3.

Part 2—Application of Act to Minister

4—Application of Act to Minister

The following provisions of the Act apply to the Minister:

- (a) Part 1 (Preliminary);
- (b) section 24 (Formation of subsidiary by regulation);
- (c) section 25 (Dissolution of subsidiary established by regulation);
- (d) the Schedule (Provisions applicable to subsidiaries), other than clause 12.

Part 3—Australian Children's Performing Arts Company

Division 1—Establishment and constitution of subsidiary

5—Establishment of subsidiary (section 24)

- (1) The Australian Children's Performing Arts Company is established as a subsidiary of the Minister.
- (2) The subsidiary—
 - (a) is a body corporate; and
 - (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name.

6—Establishment of board

- (1) A board of directors is established as the governing body of the subsidiary.

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- (2) Anything done by the board in the administration of the subsidiary's affairs is binding on the subsidiary.

7—Composition of board

- (1) The board consists of the number of directors appointed by the Minister (being not more than 8) for the time being holding office as members of the board.
- (1a) At least 2 directors must be women and at least 2 must be men.
- (2) A person appointed as a director must have such commercial, corporate governance, arts, financial or other qualifications or experience as are, in the Minister's opinion, necessary to enable the board to carry out its functions effectively.
- (3) One director must be a person nominated by the Minister for Education and Children's Services.
- (4) One director will be appointed by the Minister to chair meetings of the board.
- (5) The Minister may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (6) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.
- (7) The Minister may appoint a suitable person to be deputy of a member of the board during any period of absence of the member (and any reference to a director in these regulations will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).

8—Conditions of membership

- (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment (subject to the qualification that a person cannot serve as a director for more than 9 consecutive years).
- (2) The office of a director becomes vacant if the director—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office by the Minister by written notice.

9—Vacancies or defects in appointment of directors

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

10—Remuneration

A director is entitled to be paid from the funds of the subsidiary such remuneration, allowances and expenses as may be determined by the Minister.

11—Proceedings

- (1) A quorum of the board consists of one half of the total number of members (ignoring any fraction resulting from the division) plus one.
- (2) The director appointed to chair the board will preside at meetings of the board at which he or she is present.
- (3) If the director appointed to chair the board is absent from a meeting of the board—
 - (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy; or
 - (b) in any other case—a director chosen by the directors present at the meeting, will preside.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on a question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (6) A telephone or video conference between directors will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.
- (7) 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 directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex or facsimile transmission, or other form of communication determined by the Board, setting out the terms of the resolution.
- (7a) The board must meet at least 6 times in each year.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) A person authorised in writing by the Minister may attend (but not participate in) a meeting of the board and may have access to papers provided to directors for the purpose of the meeting.

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- (10) If the board considers that a matter dealt with at a meeting attended by a representative of the Minister should be treated as confidential, the board may advise the Minister of that opinion giving the reason for the opinion and the Minister may, subject to subregulation (11), act on that advice as the Minister thinks fit.
- (11) If the Minister is satisfied on the basis of the board's advice under subregulation (10) that the subsidiary owes a duty of confidence in respect of a matter, the Minister must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.
- (12) Subject to these regulations, the board may determine its own procedures.

12—Disclosure

- (1) Where the subsidiary discloses to the Minister in pursuance of the Act or these regulations a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice in writing of the disclosure to the person to whom the duty is owed.
- (2) A director of the subsidiary does not commit any breach of duty by reporting a matter relating to the affairs of the subsidiary to the Minister.

Division 2—Functions and performance

13—Functions of subsidiary

- (1) The subsidiary is established as a children's performing arts company to produce, present, facilitate, manage and promote high quality performing arts productions and other arts activities for children, young people, families, schools and other groups or bodies, both within the State and nationally and internationally and, in so doing, the subsidiary may—
- (a) produce, present, manage, promote or conduct performances and entertainment of any kind as may in its opinion tend to promote artistic performance for children, young people and their families; and
 - (b) promote or commission the writing of plays or dramas, the scoring and writing of operas and other musical performances, the scoring, writing and choreography of dance, and other works for performance; and
 - (c) promote the training of all persons concerned in the production, presentation or performance of artistic performances or presentations; and
 - (d) assist financially or otherwise in the production, presentation, management, promotion or conduct of performances for children, young people and their families; and
 - (e) promote public interest and participation in performance for children, young people and their families; and
 - (f) establish and maintain a collection of objects of public interest relating to the past and present practice of the performing arts for children and young people and, for that purpose, purchase, hire, accept by way of gift or loan, or otherwise acquire any such objects; and

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Part 3—Australian Children's Performing Arts Company

Division 2—Functions and performance

- (g) establish and conduct schools, courses, lectures, seminars and discussions on the art of performance; and
 - (h) enter into contracts (including contracts of employment), or other forms of agreement, connected with the production, management, presentation or promotion of performances, and enter into other forms of contract or agreement; and
 - (i) make charges for admission to any performance, production or presentation; and
 - (j) grant or dispose of rights or arrangements to televise, broadcast or record any performances undertaken under its auspices; and
 - (k) acquire, develop, hold, enhance or dispose of intellectual property; and
 - (l) perform or exercise incidental functions or powers; and
 - (m) undertake other functions or activities approved by the Minister.
- (2) The subsidiary must obtain the approval of the Minister before it makes a material change to a policy direction or budget.
- (3) The subsidiary should only undertake activities outside the State to the extent approved by the Minister or provided for by its charter.

14—Charter

- (1) The Minister must prepare a charter for the subsidiary.
- (2) The charter must address—
- (a) the nature and scope of the subsidiary's operations;
 - (b) the subsidiary's obligations to report on its operations;
 - (c) the form and contents of the subsidiary's accounts and financial statements;
 - (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;
 - (e) the acquisition or disposal of capital or assets.
- (3) The charter may—
- (a) limit the functions or powers of the subsidiary; and
 - (b) deal with any other matter not specifically referred to in subregulation (2).
- (4) The charter must be reviewed by the Minister at the end of each financial year.
- (5) The Minister may amend the charter at any time.
- (6) The charter, or an amendment to the charter, comes into force and is binding on the subsidiary on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the subsidiary).
- (7) On the charter or an amendment to the charter coming into force, the Minister must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

15—Performance statement

- (1) The Minister must, when preparing the charter for the subsidiary, also prepare, after consultation with the subsidiary, a performance statement setting the various performance targets that the subsidiary is to pursue in the coming financial year or other period specified in the statement and dealing with such other matters as the Minister considers appropriate.
- (2) The Minister must, after consultation with the subsidiary, review the performance statement when reviewing the subsidiary's charter.
- (3) The Minister may, after consultation with the subsidiary, amend the performance statement at any time.

16—Subsidiary companies

- (1) The subsidiary must not, without the approval of the Minister—
 - (a) form a subsidiary corporation; or
 - (b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a corporation such that the corporation becomes a subsidiary of the subsidiary.
- (2) The Minister may, as a condition of approval under this section, or by direction, require the subsidiary to take steps to include in a subsidiary corporation's constitution such provisions as the Minister considers appropriate—
 - (a) imposing limitations on the nature or scope of the corporation's operations; or
 - (b) imposing other controls or practices,consistent with those applicable to the subsidiary.

17—Indirect or joint operations by subsidiary

Despite any other regulation, the subsidiary must not, without the approval of the Minister (given either personally with respect to a particular case or class of case, or through the provisions of the subsidiary's charter), establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

Division 3—Financial and related matters

18—Internal audit

The subsidiary must establish and maintain effective internal auditing of its operations.

19—Quarterly reports

The subsidiary must report to the Minister on the subsidiary's financial position on a quarterly basis.

20—Loans etc require approval

- (1) The subsidiary must not lend or advance to any person any money, securities or property without the prior written approval of the Treasurer.
- (2) The subsidiary must not undertake commercial borrowings without the prior written approval of the Treasurer.

21—Provision of information

- (1) The subsidiary must, at the request in writing of the Minister, furnish the Minister with such information or records in the possession or control of the subsidiary as the Minister may require in such manner and form as the Minister may require.
- (2) If a record in the possession or control of the subsidiary is furnished to the Minister under this regulation, the Minister may make, retain and deal with copies of the record as the Minister thinks fit.
- (3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the Minister of that opinion giving the reason for the opinion and the Minister may, subject to subregulation (4), act on that advice as the Minister thinks fit.
- (4) If the Minister is satisfied on the basis of the board's advice under subregulation (3) that the subsidiary owes a duty of confidence in respect of a matter, the Minister must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

22—Common seal and execution of documents

- (1) The common seal of the subsidiary must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.
- (2) The board may, by instrument under the common seal of the subsidiary, authorise a director, an employee of the subsidiary (whether nominated by name or by office or title) or any other person to execute documents on behalf of the subsidiary subject to limitations (if any) specified in the instrument of authority.
- (3) Without limiting subregulation (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the subsidiary.
- (4) A document is duly executed by the subsidiary if—
 - (a) the common seal of the subsidiary is affixed to the document in accordance with this regulation; or
 - (b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this regulation.

23—Annual report

- (1) The subsidiary must, within three months after the end of each financial year, deliver to the Minister a report on the operations of the subsidiary during that financial year (including the audited statements of account of the subsidiary for that financial year).

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Regulations 2001**

Australian Children's Performing Arts Company—Part 3
Financial and related matters—Division 3

- (2) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after receipt of the report.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- 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 these regulations (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.

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2001	23	<i>Gazette 22.3.2001 p1043</i>	22.3.2001: r 2
2002	209	<i>Gazette 7.11.2002 p4064</i>	7.11.2002: r 2
2011	44	<i>Gazette 12.5.2011 p1483</i>	12.5.2011: r 2
2011	280	<i>Gazette 15.12.2011 p5075</i>	Pt 12 (r 15)—1.1.2012: r 2

Provisions varied

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>12.5.2011</i>
Pt 3		
r 7		
r 7(1)	varied by 209/2002 r 3	7.11.2002
	varied by 44/2011 r 4(1)	12.5.2011
r 7(1a)	inserted by 44/2011 r 4(2)	12.5.2011
r 8		
r 8(1)	varied by 44/2011 r 5(1)	12.5.2011
r 8(2)	varied by 44/2011 r 5(2)	12.5.2011
r 11		
r 11(7a)	inserted by 44/2011 r 6	12.5.2011
r 23		
r 23(1)	varied by 44/2011 r 7	12.5.2011

Transitional etc provisions associated with regulations or variations

Public Corporations (Australian Children's Performing Arts Company) Variation Regulations 2011 (No 44 of 2011), Sch 1—Transitional provision

1—Membership of board

- (1) In this clause—

principal regulations means the *Public Corporations (Australian Children's Performing Arts Company) Regulations 2001*.

- (2) A director of the board 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 regulations as varied by these regulations had been in force when he or she was appointed or last reappointed as a director and that appointment had been made under the principal regulations as so varied.
- (3) A director 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—
- (a) 1 or more provisions of regulation 7 of the principal regulations as amended by regulation 4 of these regulations (relating to the composition of the board) may not be complied with; and
 - (b) regulation 8(1) of the principal regulations as amended by regulation 5 of these regulations (prohibiting a person from serving as a director for more than 9 consecutive years) may not be complied with,
- and, in that case, those provisions will not apply for that duration.

Historical versions

7.11.2002