

SOUTH AUSTRALIA

**CULTURAL TRUSTS ACT, 1976**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 6 November 1989.*

*The Commissioner of Statute Revision is authorized by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law. A report has been prepared containing a comprehensive list of textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.*

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## **CULTURAL TRUSTS ACT, 1976**

being

Regional Cultural Centres Act, 1976, No. 109 of 1976  
[Assented to 16 December 1976]<sup>1</sup>

as amended by

Regional Cultural Centres Act Amendment Act, 1977, No. 50 of 1977 [Assented to 15 December 1977]<sup>2</sup>  
Regional Cultural Centres Act Amendment Act, 1980, No. 102 of 1980 [Assented to 18 December 1980]<sup>3</sup>  
Regional Cultural Centres Act Amendment Act, 1984, No. 8 of 1984 [Assented to 19 April 1984]<sup>4</sup>  
Cultural Trusts Act Amendment Act, 1988, No. 69 of 1988 [Assented to 10 November 1988]<sup>5</sup>

<sup>1</sup> Came into operation 7 April 1977: *Gaz.* 7 April 1977, p. 1070.

<sup>2</sup> Came into operation 7 April 1977: s. 2.

<sup>3</sup> Came into operation 18 December 1980: *Gaz.* 18 December 1980, p. 2216.

<sup>4</sup> Came into operation 12 July 1984: *Gaz.* 12 July 1984, p. 134.

<sup>5</sup> Came into operation 6 November 1989: *Gaz.* 12 October 1989, p. 1160.

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.*

**An Act to provide for the establishment of Cultural Trusts; to provide for their operation and management and for other purposes.**

The Parliament of South Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Cultural Trusts Act, 1976*.

\* \* \* \* \*

**Interpretation**

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

"area" means the municipality or district of a council:

\* \* \* \* \*

"council" means a council as defined in the *Local Government Act, 1934*:

"local resident", in relation to a Trust, means a person whose principal place of residence is situated in a part of the State in relation to which the Trust is established:

"subscriber" means a person who is for the time being a subscriber to a Trust within the meaning of the regulations:

"Trust" means a Trust established under this Act:

"trustee" in relation to a Trust, includes the trustee for the time being appointed presiding trustee.

*Note: For definition of divisional penalties see Appendix 2.*

\* \* \* \* \*

**Establishment of Cultural Trusts**

4. (1) The Governor may, by proclamation, establish a Trust in relation to a part of the State defined in the proclamation.

(2) Each Trust established under subsection (1) will have the name assigned by the proclamation under which the Trust is established.

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

**Corporate capacity of Trusts**

5. (1) A Trust—

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

(b) may sue and be sued in its corporate name;

3.

and

- (c) is capable of acquiring, holding, dealing with and disposing of real and personal property.

(2) Where a document appears to bear the common seal of a Trust, it will be presumed, in the absence of proof to the contrary, that the document has been duly executed by the Trust.

### **Membership of Trust**

6. (1) A Trust is to consist of eight trustees appointed by the Governor and of these—

- (a) one is to be nominated by the council or councils in the part of the State in relation to which the Trust is established;

and

- (b) seven are to be nominated by the Minister.

(2) Of the trustees nominated by the Minister—

- (a) four must be subscribers chosen by the Minister from persons elected (in accordance with the regulations) by the subscribers;

and

- (b) one must be a person representative of business in the part of the State in relation to which the Trust is established.

(3) A person is not eligible for nomination as a trustee unless the person is a local resident.

(4) One of the trustees must be appointed by the Governor to be the presiding trustee of the Trust.

(5) Subject to this Act, a trustee is to hold office as follows:

- (a) subject to paragraph (b), a trustee elected by subscribers is to hold office for a term of twelve months;
- (b) a trustee elected by subscribers to fill a casual vacancy is to hold office for the unexpired portion of the term of office of the trustee in whose place he or she is appointed;
- (c) any other trustee is to hold office for a term (not exceeding three years) specified in the trustee's instrument of appointment.

(6) Where a casual vacancy occurs in the office of a trustee elected by subscribers not less than four months before the next general election for the appointment of subscriber trustees, a subscriber must be elected at a by-election to fill the vacancy.

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(7) Trustees may be reappointed but not so that any person is a trustee of the same Trust for more than six consecutive years (disregarding any period of office occurring before the commencement of this subsection or resulting from an election of subscribers to fill a casual vacancy).

(8) The Governor may remove a trustee from office on the ground of—

(a) mental or physical incapacity;

(b) dishonourable conduct;

or

(c) neglect of duty.

(9) The office of a trustee becomes vacant if—

(a) the trustee dies;

(b) the trustee's term of office expires;

(c) the trustee resigns by notice in writing addressed to the Minister;

(d) the trustee ceases to be a local resident;

(e) being a trustee elected by subscribers, he or she ceases to be a subscriber;

(f) being a trustee appointed on the nomination of a council or councils, the council or councils, by notice in writing to the Minister, revoke the nomination;

or

(g) the trustee is removed from office by the Governor pursuant to subsection (8).

\* \* \* \* \*

**Powers of Trust**

**8.** (1) Subject to this Act, a Trust may—

(a) provide, manage and control premises and facilities for the arts;

(b) encourage the development and appreciation of the arts within the community served by the Trust by—

(i) the formation of a body to provide advice on funding and policy matters;

(ii) the provision of managerial, artistic and technical advice;

(iii) the provision of financial assistance for arts programmes and projects approved by the Trust;

5.

(iv) the promotion of performing and visual arts and crafts;

and

(c) do anything reasonably necessary for, or incidental or ancillary to, the exercise of its powers under this Act.

(2) In the exercise of its powers each Trust is, except where it makes or is required to make a report to the Minister, subject to the general control and direction of the Minister.

(3) Nothing in this section prevents the Trust from providing accommodation for any library or resource centre established or subsidized under a law of the State.

### **Meetings, etc., of Trust**

9. (1) The presiding trustee will preside at any meeting of the Trust at which he or she is present.

(2) If the presiding trustee is not present at a meeting of the Trust, the trustees of the Trust present may elect one of their number to preside at that meeting.

(3) At any meeting of the Trust, five trustees constitute a quorum and no business may be transacted unless a quorum is present.

(4) Any decision of the Trust must be supported by the majority of votes cast at the meeting.

(5) In the event of equality of votes upon any matter the person presiding at the meeting has a second or casting vote.

(6) The common seal of the Trust cannot be affixed to any document except in pursuance of a resolution of the Trust.

(7) Any instrument executed in pursuance of such a resolution must be attested by the signature of two trustees.

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

### **Remuneration of trustees**

10. A trustee will, if the Governor thinks fit, be paid out of the funds of the Trust such fees or other remuneration as from time to time are fixed by the Governor and is entitled to receive such travelling and other expenses at such rates as are from time to time approved by the Minister.

### **Validity, etc., of acts of Trust**

11. No purported act, proceeding or determination of the Trust is invalid on the ground only of any vacancy in the office of any trustee or any defect in the appointment of any trustee and notwithstanding any Act or law to the contrary any such purported act, proceeding or determination is as valid and effectual as it would have been had that vacancy or defect not existed.

### **Employment**

12. For the purposes of this Act, each Trust may employ such employees as it thinks necessary.

**Power to borrow money**

13. (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, upon 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.

(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 to the necessary extent appropriated accordingly.

**Power to invest**

13a. Any money of a Trust which is not immediately required by that Trust may be lodged on deposit with the Treasurer or invested in any other manner approved of by the Treasurer.

**Gifts, etc.**

14. (1) Each 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;

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

(3) Notwithstanding anything contained in the *Succession Duties Act, 1929*, no succession duty is payable in respect of any property or interest passing to a Trust on or by reason of the death of any person, and any such property is not liable to succession duty under that Act.

\* \* \* \* \*

**Budget**

14a. (1) Each Trust must, before the commencement of a financial year, present to the Minister a budget showing estimates of its receipts and payments for that financial year.

(2) The Minister may approve any budget presented pursuant to subsection (1) with or without amendment.

(3) A Trust must not, without the consent of the Minister, make any expenditure that is not authorized by a budget approved under this section.

### **Accounts**

**14b.** (1) Each 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 a Trust.

### **Report**

**14c.** (1) Each Trust must, on or before 30 September in each year, deliver to the Minister a report in writing upon its activities during the period of twelve months ending on the preceding 30 June.

(2) The report must incorporate the audited accounts of the Trust for the period to which the report relates.

(3) The Minister must cause a copy of the report to be laid before each House of Parliament.

### **Dissolution of Trust**

**15.** The Governor may by proclamation—

(a) dissolve a Trust with effect from a date or at the expiration of a period specified in the proclamation;

and

(b) make such provisions as are necessary or expedient for the winding up of the affairs of the Trust and the disposition of the real and personal property of the Trust and any such provisions have effect according to their tenor.

### **Summary offences**

**16.** Offences against this Act are summary offences.

### **Regulations**

**17.** (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe the powers, duties, functions or authorities conferred or imposed on Trusts;

(b) regulate the conduct of persons on Trust property;

(c) provide for and prescribe any matter or thing relating to—

(i) the keeping of financial accounts by Trusts;

(ii) the making of periodic reports by Trusts;

(iii) the keeping of subscription records by Trusts;

(d) prescribe the manner in which persons become, and cease to be, subscribers to a Trust;

8.

- (e) prescribe fees to be paid by subscribers;
- (f) make any other provision in relation to the rights and obligations of subscribers;
- (g) provide for and regulate the holding of general elections and by-elections for the appointment of subscriber members of a Trust;

and

- (h) prescribe fines not exceeding a division 10 fine for breach of, or non-compliance with, a regulation.

(3) A regulation made under this section may apply to Trusts generally or to particular Trusts or classes of Trust.

**APPENDIX 1**

## Legislative History

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 6 November 1989. A schedule of these alterations was laid before Parliament on 3 August 1989.

Long title:	amended by 8, 1984, s. 3
Section 1:	amended by 8, 1984, s. 4
Section 2:	deleted in pursuance of the Acts Republication Act, 1967, as its function is now exhausted
Section 3:	definition of "Centre" repealed by 8, 1984, s. 5(a) definition of "local resident" inserted by 8, 1984, s. 5(b) definition of "subscriber" inserted by 69, 1988, s. 3 definition of "Trust" substituted by 8, 1984, s. 5(c)
Section 3a:	inserted by 8, 1984, s. 6; deleted in pursuance of the Acts Republication Act, 1967, as its function is now exhausted
Section 4:	amended by 102, 1980, s. 3; substituted by 8, 1984, s. 7
Section 5:	amended by 102, 1980, s. 4; substituted by 8, 1984, s. 7
Section 6:	substituted by 8, 1984, s. 7; 69, 1988, s. 4
Section 7:	repealed by 8, 1984, s. 7
Section 8(1):	substituted by 8, 1984, s. 8(a); 69, 1988, s. 5
Section 8(3):	amended by 8, 1984, s. 8(b)
Section 9(3):	amended by 102, 1980, s. 5
Section 13a:	inserted by 50, 1977, s. 3
Section 14(4):	repealed by 8, 1984, s. 9
Sections 14a - 14c:	inserted by 8, 1984, s. 10
Section 17:	substituted by 69, 1988, s. 6
Section 17(2) second occurring:	redesignated as s. 17(3) in pursuance of the Acts Republication Act, 1967

10.

## APPENDIX 2

### Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

*Note: This appendix is provided for convenience of reference only.*