

South Australia

## **South Australian Country Arts Trust Act 1992**

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

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### Legislative history

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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 *South Australian Country Arts Trust Act 1992*.

#### 3—Interpretation

- (1) 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;

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

**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.

- (2) 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—The South Australian Country Arts Trust

#### 4—Establishment of Trust

- (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.

## 5—Membership of Trust

- (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.

## 6—Terms and conditions of office

- (1) The presiding trustee of the Trust is appointed for a term not exceeding three years specified in the instrument of appointment.
- (2) A trustee of the Trust (other than the presiding trustee or a trustee who holds office *ex officio*) is appointed for a term not exceeding two years specified in the instrument of appointment.
- (2a) A trustee is eligible for reappointment on the expiration of a term of office but cannot be reappointed so that—
- (a) the person's total term of office exceeds nine years; or
  - (b) the person's total term of office as a presiding trustee exceeds six years; or
  - (c) the person's total term of office as a trustee other than a presiding trustee exceeds six 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.

## 7—Procedures of Trust

- (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.

## 8—Conflict of interest

- (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
  - (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.

## **9—Functions and powers of Trust**

- (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.

## **10—Trust subject to direction and control of Minister**

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

## **11—Committees**

- (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.

## 12—Delegation

- (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.

## 13—Staffing arrangements

- (1) The employing authority may employ staff to perform functions in connection with the operations or activities of the Trust.
- (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 Management Act 1995*).
- (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 Trust 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 Trust does not have the power to employ any person.
- (12) The Trust may, under an arrangement established by the 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 Management Act 1995*.

#### **14—Power to borrow money**

- (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.
- (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.

#### **15—Power to invest**

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.

#### **16—Gifts etc**

- (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.

## 17—Budget

- (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.

## 18—Accounts

- (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.

## 19—Annual report

- (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.

## Part 3—The Country Arts Boards

### 20—Establishment of Country Arts Boards

- (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.

## **21—Membership of Country Arts Boards**

- (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.

## **22—Terms and conditions of office**

- (1) The presiding member of a Country Arts Board is appointed for a term not exceeding three years specified in the instrument of appointment.
- (2) A member of a Country Arts Board (other than the presiding member) is appointed for a term not exceeding two years specified in the instrument of appointment.

- (2a) A member of a Country Arts Board is eligible for reappointment on the expiration of a term of office but cannot be reappointed so that—
- (a) the person's total term of office exceeds nine years; or
  - (b) the person's total term of office as a presiding member exceeds six years; or
  - (c) the person's total term of office as a member other than a presiding member exceeds six 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.

## 23—Procedures of Boards

- (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.

## **24—Conflict of interest**

- (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.

## **25—Functions and powers of Boards**

- (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.

## **26—Committees**

- (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.

## **27—Delegation**

- (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.

## 28—Budget

- (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.

## Part 4—Miscellaneous

### 29—Protection from personal liability

- (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.

### 30—Regulations

- (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—Transitional provisions**

### **Part 2—Transitional provisions**

#### **2—Transfer of property etc of Cultural Trusts etc to Country Arts Trust**

- (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.

#### **3—Transfer of staff of Cultural Trusts etc to Country Arts Trust**

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

<b>Column 1</b>	<b>Column 2</b>
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.

**Column 1**

**Column 2**

South East Country Arts Board

South East Cultural Trust.

## Legislative history

### Notes

- Amendments 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 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).

### Legislation repealed by principal Act

The *South Australian Country Arts Trust Act 1992* repealed the following:

*Cultural Trusts Act 1976*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1992	57	<i>South Australian Country Arts Trust Act 1992</i>	29.10.1992	26.11.1992 except ss 4—19, 20(5)—(7), 21(1)(a) & (b), 21(3), 22—29 & Sch—1.1.1993 ( <i>Gazette 26.11.1992 p1622</i> )
1994	64	<i>South Australian Country Arts Trust (Touring Programmes) Amendment Act 1994</i>	3.11.1994	3.11.1994
1995	78	<i>South Australian Country Arts Trust (Review) Amendment Act 1995</i>	23.11.1995	1.1.1996 ( <i>Gazette 21.12.1995 p1750</i> )
2000	69	<i>South Australian Country Arts Trust (Appointments to Trust and Boards) Amendment Act 2000</i>	7.12.2000	1.2.2001 ( <i>Gazette 18.1.2001 p70</i> )
<b>2006</b>	<b>41</b>	<b><i>Statutes Amendment (Public Sector Employment) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 18 (ss 78 &amp; 79)—1.4.2007 (<i>Gazette 29.3.2007 p930</i>)</b>
2009	3	<i>South Australian Country Arts Trust (Constitution of Trust) Amendment Act 2009</i>	12.2.2009	1.4.2009( <i>Gazette 12.3.2009 p992</i> )

### Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	

Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)	<b>s 3 redesignated as s 3(1) by 41/2006 s 78(2)</b>	<b>1.4.2007</b>
employing authority	<b>inserted by 41/2006 s 78(1)</b>	<b>1.4.2007</b>
s 3(2)	<b>inserted by 41/2006 s 78(2)</b>	<b>1.4.2007</b>
Pt 2		
s 5		
s 5(1)—(3)	substituted by 78/1995 s 3	1.1.1996
s 5(3a)	inserted by 78/1995 s 3	1.1.1996
s 6		
s 6(1)	amended by 78/1995 s 4(a)	1.1.1996
	substituted by 69/2000 s 3	1.2.2001
s 6(2)	substituted by 69/2000 s 3	1.2.2001
s 6(2a)	inserted by 69/2000 s 3	1.2.2001
s 6(5)	amended by 78/1995 s 4(b)	1.1.1996
s 6(7)	amended by 78/1995 s 4(c)	1.1.1996
s 7		
s 7(2)	substituted by 78/1995 s 5	1.1.1996
s 8		
s 8(1)	amended by 78/1995 s 9 (Sch)	1.1.1996
s 9		
s 9(1)	amended by 64/1994 s 2	3.11.1994
<b>s 13</b>	<b>substituted by 41/2006 s 79</b>	<b>1.4.2007</b>
Pt 3		
s 20		
s 20(1)	substituted by 78/1995 s 6	1.1.1996
s 21		
s 21(1)	amended by 78/1995 s 7(a), (b)	1.1.1996
s 21(1a)	inserted by 78/1995 s 7(c)	1.1.1996
s 21(3)	substituted by 78/1995 s 7(d)	1.1.1996
s 22		
s 22(1) and (2)	substituted by 69/2000 s 4	1.2.2001
s 22(2a)	inserted by 69/2000 s 4	1.2.2001
s 24		
s 24(1)	amended by 78/1995 s 9 (Sch)	1.1.1996
s 27		
s 27(1)	amended by 78/1995 s 8	1.1.1996
Pt 4		
s 30		
s 30(2)	amended by 78/1995 s 9 (Sch)	1.1.1996

Sch

*Pt 1* omitted under *Legislation Revision and  
Publication Act 2002*

## **Transitional etc provisions associated with Act or amendments**

### ***South Australian Country Arts Trust (Review) Amendment Act 1995***

#### **10—Transitional provisions**

- (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.

#### ***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).
- (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).

#### **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.

## Historical versions

Reprint No 1—3.11.1994

Reprint No 2—1.1.1996

Reprint No 3—1.2.2001