

South Australia

# **Public Corporations (Adelaide Film Festival) Regulations 2017**

under the *Public Corporations Act 1993*

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Public Corporations (Adelaide Film Festival) Regulations 2017*.

### 2—Commencement

These regulations come into operation on the day on which they are made.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

*Act* means the *Public Corporations Act 1993*;

*board* means the board of directors continued 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;

*revoked regulations* means the *Public Corporations (Adelaide Film Festival) Regulations 2002* revoked under Schedule 1;

*subsidiary* means the Adelaide Film Festival continued in existence under Part 3.

## Part 2—Application 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—Adelaide Film Festival

### Division 1—Continuation and constitution of subsidiary

#### 5—Continuation of subsidiary (section 24)

- (1) The *Adelaide Film Festival*, established as a subsidiary of the Minister under the revoked regulations, continues 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—Continuation of board**

- (1) A board of directors continues as the governing body of the subsidiary.
- (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 (not being more than 8) for the time being holding office as members of the board.
- (2) The board must, as far as practicable, be comprised of equal numbers of women and men.
- (3) One director will be appointed by the Minister to chair meetings of the board.
- (4) 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.
- (5) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.
- (6) 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 3 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 1 half of the total number of members (ignoring any resulting fraction) plus 1.
- (2) The director appointed to chair the board will preside at meetings of the board at which the director 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 1 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 will be taken to be 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 in writing setting out the terms of the resolution.
- (8) The board must meet at least 6 times in each year.
- (9) The board must cause accurate minutes to be kept of its proceedings.
- (10) 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.
- (11) 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 (12), act on that advice as the Minister thinks fit.

- (12) If the Minister is satisfied on the basis of the board's advice under subregulation (11) 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.
- (13) Subject to these regulations, the board may determine its own procedures.

## **12—Disclosure**

- (1) If, for the purposes of the Act or these regulations, the subsidiary discloses to the Minister 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's functions are limited to the following:
- (a) to develop, manage, market, promote and present a biennial film festival that will be recognised internationally;
  - (b) to establish and conduct special events programs that celebrate screen culture and encourage broad public interest and participation in the festival and the film industry more generally;
  - (c) to establish and conduct a variety of public forums and events to encourage and promote dialogue with key local, national and international screen practitioners including directors, screen writers, producers, cinematographers, designers and actors;
  - (d) to establish and conduct a comprehensive program of workshops involving key local, national and international screen practitioners in order to facilitate the exchange of experience, knowledge and skills and contribute to the development of screen practitioners;
  - (e) to contribute to the development of the screen industry and film audiences by promoting cutting edge developments in screen culture through the festival and other initiatives;
  - (f) to determine and present screen awards in conjunction with the festival;
  - (g) to commission screen products for the festival with other bodies, as appropriate;
  - (h) to enter into contracts or other forms of agreement connected with the development, management, marketing, promotion, presentation and delivery of the festival, including, but not limited to, contracts of employment and contracts for the lease, hire or construction of venues and other facilities for the festival;
  - (i) to enter into contracts and other forms of agreement for the hire, freight, distribution and screening of screen products;

- (j) to acquire, develop, hold, enhance, deal with or dispose of intellectual property;
  - (k) to make charges for admission to any forum, workshop, presentation, screening or other event;
  - (l) to perform or exercise incidental functions or powers;
  - (m) to carry out other functions conferred on the subsidiary by the Minister.
- (2) The subsidiary must obtain the approval of the Minister before it makes a material change to its policy direction or budget.

#### **14—Charter**

- (1) The subsidiary must continue to have a charter prepared by the Minister.
- (2) The charter must address—
- (a) the nature and scope of the subsidiary's operations; and
  - (b) the subsidiary's obligations to report on its operations; and
  - (c) the form and contents of the subsidiary's accounts and financial statements; and
  - (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary; and
  - (e) the acquisition or disposal of capital or assets.
- (3) The charter may 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 subsidiary continues to be subject to the performance statement prepared by the Minister that sets out 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 company; 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**

The subsidiary must not, without the approval of the Treasurer, 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 2 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 2 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 3 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).
- (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.

## **Schedule 1—Revocation and transitional provisions**

### **1—Revocation of *Public Corporations (Adelaide Film Festival) Regulations 2002***

The *Public Corporations (Adelaide Film Festival) Regulations 2002* are revoked.

### **2—Transitional provision**

A member of the board holding office immediately before the commencement of this clause will continue in office after the commencement of this clause (but only for the balance of the term for which the member was appointed).

#### **Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.



**Made by the Governor**

with the advice and consent of the Executive Council  
on 30 May 2017

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