

South Australia

Public Corporations (Australian Children's Performing Arts Company) Regulations 2016

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 2016*.

2—Commencement

These regulations will come into operation on 1 September 2016.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Public Corporations Act 1993*;

Australian Children's Performing Arts Company means the subsidiary of the Minister continued under regulation 5(1);

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

Department for Education and Child Development means the agency of the Public Sector that assists a Minister in the administration of the *Education and Early Childhood Services (Registration and Standards) Act 2011*;

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

Minister means the Minister for the Arts;

presiding director—see regulation 7(3)(a);

repealed regulations means the *Public Corporations (Australian Children's Performing Arts Company) Regulations 2001* repealed under Schedule 1;

subsidiary—see regulation 5(1).

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—Continuation and constitution of subsidiary

5—Continuation of subsidiary (section 24)

- (1) The Australian Children's Performing Arts Company, established as a subsidiary of the Minister under the repealed regulations, continues as a subsidiary of the Minister.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—Establishment of board

- (1) A board of directors is established 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 will consist of not more than 8 directors appointed by the Minister, of whom—
 - (a) at least 1 must be, or have been, a professional practising performing artist; and
 - (b) 1 must be a person employed by the Department for Education and Child Development nominated by the Minister who, under the *Public Sector Act 2009*, has responsibility for that Department; and
 - (c) the others must together 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.
- (2) At least 2 directors must be women and at least 2 must be men.
- (3) The Minister must appoint—
 - (a) a director to chair meetings of the board (the *presiding director*); and
 - (b) another director to be the deputy of the presiding director, and the deputy may perform or exercise the functions and powers of the presiding director in the presiding director's absence.
- (4) The Minister may appoint a suitable person to be deputy of a member of the board (other than the member appointed to be the deputy of the presiding member) 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).
- (5) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.

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—
 - (a) in the case of a person holding office under regulation 7(1)(b)—the person ceases to be an employee of the Department for Education and Child Development; and
 - (b) in any case—the person—
 - (i) dies; or
 - (ii) completes a term of office and is not reappointed; or
 - (iii) resigns by written notice to the Minister; or
 - (iv) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (v) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (vi) is removed from office by the Minister by written notice.
- (3) On the office of a director becoming vacant, a person will be appointed in accordance with regulation 7 to the vacant office (but, where the office of a director becomes vacant before the expiration of a term of appointment, the successor will be appointed only for the balance of the term).

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 (1 of whom must be the presiding director or his or her deputy) consists of one half of the total number of members (ignoring any fraction resulting from the division) plus 1.
- (2) The presiding director will preside at meetings of the board at which he or she is present.
- (3) If the presiding director is absent from a meeting of the board, the director who has been appointed as the presiding director's deputy will preside at the meeting.
- (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 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, fax, email or other written means of communication determined by the board, 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 the subsidiary discloses to the Minister under 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 and young people, and their families; and
 - (b) promote or commission the writing of plays, screenplays or other 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 and young people, and their families; and
 - (e) promote public interest and participation in performance for children and 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
 - (g) establish and conduct schools, courses, lectures, seminars and discussions on the art of performance; and
 - (h) undertake or promote research into the art of performance both generally and in the area of performance and theatre practice for children and young people; and
 - (i) 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
 - (j) make charges for admission to any performance, production or presentation; and
 - (k) grant or dispose of rights or arrangements to televise, broadcast or record any performances undertaken under its auspices; and
 - (l) acquire, develop, hold, enhance or dispose of intellectual property; and
 - (m) perform or exercise incidental functions or powers; and
 - (n) 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 regulation, 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, provide 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 provided 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 provided 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 pursuant to 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 the *Public Corporations (Australian Children's Performing Arts Company) Regulations 2001*

The *Public Corporations (Australian Children's Performing Arts Company) Regulations 2001* are revoked.

2—Transitional provision

A member of the board holding office immediately before the commencement of this clause will, subject to regulation 8(2)(a), continue in office after the commencement of this clause (but only for the balance of the term for which the member was appointed).

Legislative history

Notes

- 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

Year	No	Reference	Commencement
2016	189	<i>Gazette 11.8.2016 p3177</i>	1.9.2016: r 2