

South Australia



ADELAIDE FESTIVAL CORPORATION ACT 1998

No. 73 of 1998

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ELIZABETHAE II REGINAE

A.D. 1998

No. 73 of 1998

An Act to establish the Adelaide Festival Corporation; to provide for the conduct of the Adelaide Festival of Arts; and for other purposes.

[Assented to 17 December 1998]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Adelaide Festival Corporation Act 1998*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act—

"board" means the governing authority of the Corporation—*see* Division 1 of Part 4;

"Corporation" means the Adelaide Festival Corporation established under this Act;

"logo" means a design (the copyright of which is vested in the Crown in right of the State) declared by the Minister by notice under Part 5 to be a logo;

"official insignia" means a logo, an official symbol or an official title;

"official symbol" means a combination of a logo and an official title;

"official title" means a name or title that is declared to be an official title by or under Part 5;

"promote", in relation to an event, includes organise, commission, support, market, advertise or act as project manager.

(2) For the purposes of this Act, goods will be taken to be marked with official insignia if the insignia is affixed or annexed to, marked on, or incorporated in or with—

- (a) the goods; or
- (b) any covering or container in which the goods are wholly or partly enclosed; or
- (c) anything placed in or attached to any such covering or container; or
- (d) anything that is attached to the goods or around which the goods are wrapped or wound.

PART 2
ESTABLISHMENT OF ADELAIDE FESTIVAL CORPORATION

Establishment of Adelaide Festival Corporation

4. (1) The *Adelaide Festival Corporation* is established.
- (2) The Corporation—
- (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; and
 - (d) has the functions and powers assigned or conferred by or under this Act.
- (3) The Corporation is an instrumentality of the Crown and holds its property on behalf of the Crown.

PART 3
FUNCTIONS AND POWERS OF THE CORPORATION

Functions of the Corporation

5. The functions of the Corporation are—

- (a) to conduct in Adelaide and other parts of the State the multifaceted arts event that is known as the Adelaide Festival of Arts;
- (b) to continue and further develop the Adelaide Festival of Arts as an event of international standing and excellence;
- (c) to conduct or promote other events and activities;
- (d) to provide advisory, consultative, managerial or support services within areas of the Corporation's expertise;
- (e) to undertake other activities that promote the arts or public interest in the arts, or that otherwise involve an appropriate use of its resources;
- (f) to carry out other functions assigned to the Corporation by or under this or any other Act, or by the Minister.

Powers of the Corporation

6. (1) The Corporation has all the powers of a natural person together with the powers conferred on it under this or any other Act.

(2) The Corporation may, for example—

- (a) employ staff on terms and conditions determined by the Corporation or make use of the services of staff employed in the public or private sector;
- (b) engage agents, consultants or other contractors;
- (c) enter into contracts or agreements with artists, performers, entertainers and other persons involved in the arts, or employ such persons;
- (d) enter into other contracts, agreements or arrangements;
- (e) acquire, hold, deal with and dispose of any interest in real or personal property;
- (f) accept gifts or grants or obtain financial sponsorship from any person or body;
- (g) carry on any advertising and promotional activities;
- (h) conduct events and establish, operate or manage venues and other facilities (including food and liquor facilities);
- (i) regulate and control admission to any venue for any event or activity conducted, promoted or undertaken by the Corporation, and charge and collect fees for admission to any such venue;

- (j) grant for fee or other consideration advertising or sponsorship rights or other rights, licences or concessions in connection with events or activities conducted, promoted or undertaken by the Corporation;
- (k) publish or produce books, programs, brochures, films, souvenirs and other things relating to events or activities conducted, promoted or undertaken by the Corporation;
- (l) sell or supply food and drink (including alcoholic beverages), books, programs, brochures, films, souvenirs and other things in connection with events or activities conducted, promoted or undertaken by the Corporation;
- (m) grant or dispose of rights to televise, broadcast or record any events or activities conducted, promoted or undertaken by the Corporation;
- (n) restrict, control and make charges for the use of official insignia;
- (o) take out policies of insurance in its own right or on behalf of the State;
- (p) acquire and hold licences;
- (q) participate (whether as a member or otherwise) in, or otherwise be involved in the activities of, national or international organisations or associations involved in the arts, or the promotion of the arts;
- (r) enter into any partnership or joint venture arrangement;
- (s) form, or acquire, hold, deal with and dispose of shares or other interests in, or securities issued by, bodies corporate, whether within or outside the State;
- (t) borrow money and obtain other forms of financial accommodation;
- (u) act as trustee on behalf of another person in connection with the performance of its functions under this Act.

(3) However, the Corporation must not, without the approval of the Treasurer, exercise a power referred to in subsection (2)(s) or (t).

(4) The Corporation may exercise its powers within and outside the State.

PART 4
MANAGEMENT OF THE CORPORATION

DIVISION 1—BOARD

Establishment of board

7. (1) There will be a board to act as the governing authority of the Corporation.

(2) The functions and powers of the Corporation may be performed and exercised by the board and decisions made by the board are decisions of the Corporation.

Composition of board

8. (1) The board will consist of not more than eight members appointed by the Governor, of whom—

- (a) one will be a person selected from a panel of three persons nominated by the Friends of the Adelaide Festival Incorporated; and
- (b) one will be a person selected from a panel of three persons nominated by The Corporation of the City of Adelaide; and
- (c) the remainder will be persons nominated by the Minister.

(2) At least two members of the board must be women and at least two must be men.

(3) One member of the board will be appointed by the Governor to chair meetings of the board.

(4) The Governor may appoint a suitable person to be a deputy of a member (being a person nominated by the body or person who nominated the member) and a person so appointed may act as a member of the board in the absence of the member.

Terms and conditions of appointment of members

9. (1) A member of the board will be appointed for a term, not exceeding three years, specified in the instrument of appointment.

(2) A member is, at the expiration of a term of appointment, eligible for reappointment but not so as to hold office for consecutive terms that exceed six years in total.

(3) The Governor may remove a member from office on any grounds that the Governor considers sufficient.

(4) The office of a member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Minister; or
- (d) is convicted of an indictable offence; or
- (e) is removed from office under subsection (3).

Vacancies or defects in appointment of members

10. An act or proceeding of the board is not invalid by reason only of a vacancy in its membership and, despite the subsequent discovery of a defect in the appointment of a member, an act or proceeding of the board will be as valid and effectual as if the member had been duly appointed.

Remuneration

11. A member of the board is entitled to such remuneration, allowances and expenses as may be determined by the Governor.

Proceedings

12. (1) A quorum of the board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) In the absence of the member appointed to chair meetings of the board at a meeting of the board, a member chosen by the members present at the meeting will preside.

(3) A decision carried by a majority of the votes cast by members at a meeting is a decision of the board.

(4) Each member present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.

(5) A conference by telephone or other electronic means between members will, for the purposes of this section, be taken to be a meeting of the board at which the participating members are present if—

- (a) notice of the conference is given to all members in the manner determined by the board for the purpose; and
- (b) each participating member is capable of communicating with every other participating member during the conference.

(6) 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 members in accordance with procedures determined by the board; and
- (b) a majority of the members expresses concurrence in the proposed resolution by letter or by facsimile transmission or other electronically transmitted written communication setting out the terms of the resolution.

(7) The board must have accurate minutes kept of its proceedings.

(8) Subject to this Act, the board may determine its own procedures.

Disclosure of interest

13. (1) A member of the board who has a direct or indirect pecuniary or personal interest in a matter under consideration by the board—

- (a) must disclose the nature of the interest to the board; and

(b) must not take part in any deliberations or decision of the board in relation to that matter.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(2) A member of the board will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member has an interest in the matter that is shared in common with the public, the arts industry generally or a substantial section of the public or the industry.

(3) 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.

(4) A disclosure under this section must be recorded in the minutes of the board and reported to the Minister.

(5) If, in the Minister's opinion, a particular interest or office of a member is of such significance as to be inconsistent with the proper discharge of the duties of a member of the board, the Minister may require that the member either cease to have or hold the interest or office or resign from the board (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the member from the board).

(6) If a member discloses an interest in a proposed contract under this section and takes no part in any deliberations or decision of the board on the contract—

(a) the contract is not liable to be avoided by the Corporation; and

(b) the member is not liable to account for profits derived from the contract.

Members' duties of honesty, care and diligence

14. (1) A member of the board must at all times act honestly in the performance of official functions.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(2) A member of the board must at all times exercise a reasonable degree of care and diligence in the performance of official functions.

(3) If a member of the board is culpably negligent in the performance of official functions, the member is guilty of an offence.

Maximum penalty: \$20 000.

(4) A member is not culpably negligent for the purposes of subsection (3) unless the court is satisfied the member's conduct fell sufficiently short of the standard required of the member to warrant the imposition of a criminal sanction.

(5) A member or former member of the board must not make improper use of information acquired through his or her official position to gain directly or indirectly a personal advantage for himself, herself or another, or to cause detriment to the Corporation or the State.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(6) A member of the board must not make improper use of his or her official position to gain directly or indirectly a personal advantage for himself, herself or another or to cause detriment to the Corporation or the State.

Maximum penalty: \$20 000 or imprisonment for 4 years.

(7) This section—

- (a) operates both inside and outside the State; and
- (b) is in addition to, and does not derogate from, other laws.

Immunity of members

15. (1) A member of the board incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of functions or powers under this Act.

(2) The immunity conferred by subsection (1) does not extend to culpable negligence.

(3) A civil liability that would, but for this section, attach to a member of the board attaches instead to the Crown.

DIVISION 2—MINISTERIAL CONTROL

Ministerial control

16. (1) Subject to subsection (2), the board is subject to the control and direction of the Minister.

(2) No Ministerial direction can be given—

- (a) as to the artistic content of an event or activity conducted by the Corporation; or
- (b) as to the manner in which the board is to deal with a testamentary or other gift.

DIVISION 3—COMMITTEES AND DELEGATIONS

Committees

17. (1) The board may establish such committees (including advisory or subcommittees) as the board thinks fit.

(2) The membership of a committee will be determined by the board and may, but need not, consist of, or include, members of the board.

(3) The procedures to be observed in relation to the conduct of the business of a committee will be—

- (a) as determined by the board;
- (b) insofar as a procedure is not determined under paragraph (a)—as determined by the committee.

Delegation

18. (1) The board may, by instrument in writing, delegate functions or powers under this Act.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be made—

(i) to a particular person, committee or body; or

(ii) to the person for time being occupying a particular office or position; and

(b) may be made subject to conditions and limitations specified in the instrument of delegation; and

(c) is revocable at will and does not derogate from the power of the delegator to act in any matter.

(4) A delegate must not act pursuant to the delegation in any matter in which the delegate has a direct or indirect pecuniary or personal interest.

Maximum penalty: \$10 000 or imprisonment for 2 years.

(5) It is a defence to a charge of an offence against subsection (4) to prove that the defendant was, at the time of the alleged offence, unaware of his or her interest in the matter.

DIVISION 4—FINANCIAL MATTERS AND ANNUAL REPORTS**Accounts and audit**

19. (1) The board must cause proper accounting records to be kept in relation to the financial affairs of the Corporation, and must have annual statements of account prepared in respect of each financial year.

(2) The accounting records and the statements of account must comply with—

(a) any instructions of the Treasurer under section 41 of the *Public and Finance Act 1987*; and

(b) any further requirements imposed by the Auditor-General.

(3) The Auditor-General may at any time audit the accounts of the Corporation and must audit the annual statements of account.

Annual report

20. (1) The board must, on or before 30 September in every year, forward to the Minister a report on the work and operations of the Corporation for the preceding financial year.

(2) The report must contain the audited statements of account of the Corporation for the preceding financial year.

(3) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

PART 5
MISCELLANEOUS

Common seal and execution of documents

21. (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board and the fixing of the seal must be attested by the signatures of two members of the board.

(2) The board may, by instrument under the common seal of the Corporation, authorise a person or persons (whether nominated by name or by office or title) to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Corporation.

(4) A document is duly executed by the Corporation if—

- (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
- (b) the document is signed on behalf of the Corporation by a person or persons in accordance with authority conferred under this section.

Corporation may conduct operations under other name

22. (1) The Corporation may, if the board so determines, conduct its operations or any part of its operations not under the name *Adelaide Festival Corporation* but under some other name declared by the Minister by notice in the *Gazette*.

(2) However, the Minister must not make a declaration under subsection (1) in relation to a name that is registered or otherwise protected under another Act unless the Minister is acting with the consent or agreement of the person who has the benefit of the registration or protection.

(3) The *Adelaide Festival Corporation* and any other name declared under subsection (1) are official titles.

Declaration of logos and official titles

23. (1) The Minister may, by notice in the *Gazette*, declare a logo to be a logo in respect of the Corporation or a particular event or activity conducted, promoted or undertaken by the Corporation.

(2) The Minister may, by notice in the *Gazette*, declare a name or a title of an event or activity conducted, promoted or undertaken by the Corporation to be an official title.

(3) However, the Minister must not make a declaration under subsection (2) in relation to a name or title that is registered or otherwise protected under another Act unless the Minister is acting with the consent or agreement of the person who has the benefit of the registration or protection.

(4) The Minister may, by notice in the *Gazette*, vary or revoke a notice under this section.

Protection of proprietary interests of Corporation

24. (1) The Corporation has a proprietary interest in all official insignia.

(2) A person must not, without the consent of the Corporation, in the course of a trade or business—

- (a) use a name in which the Corporation has a proprietary interest under this section for the purpose of promoting the sale of services or the provision of any benefits; or
- (b) sell goods marked with official insignia; or
- (c) use official insignia for the purpose of promoting the sale of goods or services.

Maximum penalty: \$20 000.

(3) A person must not, without the consent of the Corporation, assume a name or description that consist of, or includes, official insignia.

Maximum penalty: \$20 000.

(4) A consent under this section—

- (a) may be given with or without conditions (including conditions requiring payment to the Corporation); and
- (a) may be given generally by notice in the *Gazette* or by notice in writing addressed to an applicant for the consent; and
- (b) may be revoked by the Corporation for breach of a condition by notice in writing given personally or by post to a person who has the benefit of the consent.

(5) The Supreme Court may, on the application of the Corporation, grant an injunction to restrain a breach of this section.

(6) The court by which a person is convicted of an offence against this section may, on the application of the Corporation, order the convicted person to pay compensation of an amount fixed by the court to the Corporation.

(7) Subsections (5) and (6) do not derogate from any civil remedy that may be available to the Corporation apart from those subsections.

Seizure and forfeiture of goods

25. (1) If—

- (a) goods apparently intended for a commercial purpose are marked with official insignia; and
- (b) a member of the police force suspects on reasonable grounds that the use of the insignia has not been authorised by the Corporation,

the member may seize those goods.

(2) If goods have been seized under this section and—

- (a) proceedings are not instituted for an offence against section 24(2) in relation to the goods within three months of their seizure; or
- (b) after proceedings have been instituted and completed, the defendant is not convicted,

the person from whom they were seized is entitled to recover—

- (c) the goods or, if they have been destroyed, compensation equal to the market value of the goods at the time of their seizure; and
- (d) compensation for any loss suffered by reason of the seizure of the goods.

(3) An action for the payment of compensation under subsection (2) may be brought against the Corporation in any court of competent jurisdiction.

(4) The court by which a person is convicted of an offence against this Act may order that goods to which the offence relates be forfeited to the Crown.

(5) Any goods forfeited to the Crown must be disposed of in such manner as the Minister may direct and, if sold, the proceeds of the sale paid into the Consolidated Account.

Approvals by Treasurer

26. (1) An approval given by the Treasurer under this Act may be—

- (a) specific or general; and
- (b) conditional or unconditional.

(2) An approval given by the Treasurer may be varied or revoked by the Treasurer at any time.

Regulations

27. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

SCHEDULE*Transitional provisions***Transfer of staff**

1. (1) The Governor may, by proclamation, declare that a person who is, immediately before the commencement of this clause, employed or engaged for any purpose associated with the conduct of the Adelaide Festival of Arts is to be employed in a position in the employment of the Corporation (and such a proclamation will have effect according to its terms).

(2) The transfer of a person's employment under subclause (1)—

(a) does not constitute a termination of a pre-existing employment agreement; and

(b) does 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.

(3) The Governor may, by proclamation, make any transitional or ancillary provision that may be necessary or expedient in connection with the operation of subclause (1).

Transfer of assets and liabilities

2. (1) The Minister may, by instrument in writing, vest assets or liabilities of the Minister associated with the Adelaide Festival of Arts in the Corporation.

(2) An instrument under subclause (1) may, in relation to assets or liabilities of the Minister associated with the Adelaide Festival of Arts, be expressed to operate—

(a) in relation to all assets or liabilities;

(b) in relation to various classes of assets or liabilities;

(c) in relation to specific assets or liabilities.

(3) An instrument under subclause (1) may make other provisions that in the opinion of the Minister are necessary or expedient in connection with the vesting of assets or liabilities.

(4) The vesting of assets or liabilities under this clause operates by force of this clause and despite the provisions of any other law or instrument.

(5) The Registrar-General or another authority required or authorised under a law of the State to register or record transactions affecting assets or liabilities, or documents relating to such transactions, must, on application under this clause, register or record in an appropriate manner a vesting under this clause.

(6) No fee is payable in respect of an application under subclause (5).

(7) Nothing done under this clause—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom or in any other way); or

(d) constitutes a civil or criminal wrong; or

- (e) 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; or
- (f) releases a surety or other obligee wholly or in part from an obligation.

(8) In this clause—

"asset" means—

- (a) a present, contingent or future legal or equitable estate or interest in real or personal property; or
- (b) a present, contingent or future right, power, privilege or immunity,

(and includes a present or future cause of action in favour of the Minister);

"liability" means a present, contingent or future liability or obligation (including a non-pecuniary obligation and a present or future cause of action against the Minister).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor