



SOUTH AUSTRALIAN COUNTRY ARTS TRUST ACT 1992

No. 57 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 57 of 1992

An Act to establish the South Australian Country Arts Trust and Country Arts Boards and define their functions and powers; to repeal the Cultural Trusts Act 1976; and for other purposes.

[Assented to 29 October 1992]

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *South Australian Country Arts Trust Act 1992*.

Commencement

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

Interpretation

3. 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;

“**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.

Note: For definition of divisional penalties see Appendix.

PART 2

THE SOUTH AUSTRALIAN COUNTRY ARTS TRUST

Establishment of Trust

4. (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.

Membership of Trust

5. (1) The Trust is to consist of 10 trustees appointed by the Minister, of whom—

(a) one will be appointed by the Minister to be the presiding trustee of the Trust;

(b) one will be a person nominated by the Local Government Association of South Australia;

(c) one will be a member of the Central Region Country Arts Board selected from a panel of two such members nominated by the Board;

(d) one will be a member of the Eyre Peninsula Country Arts Board selected from a panel of two such members nominated by the Board;

(e) one will be a member of the Northern Country Arts Board selected from a panel of two such members nominated by the Board;

(f) one will be a member of the Riverland Country Arts Board selected from a panel of two such members nominated by the Board;

(g) one will be a member of the South East Country Arts Board selected from a panel of two such members nominated by the Board;

and

(h) three will be persons who together will provide business, entrepreneurial and arts skills.

(2) At least two trustees must be women and two must be men.

(3) Each trustee who is a member of a Country Arts Board will, until his or her office becomes vacant, have as his or her proxy the other member of the Board comprising the panel nominated by the Board under subsection (1).

(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.

Terms and conditions of office

6. (1) A trustee will be appointed for such term—

(a) in the case of the presiding trustee—not exceeding three years;

or

(b) in any other case—not exceeding two years,

as the Minister specifies in the instrument of appointment.

(2) A trustee is, on the expiration of his or her term of office, eligible for reappointment but a person cannot hold office as a trustee for more than six consecutive 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;

(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;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice addressed to the Minister;

(d) being a trustee appointed on the nomination of a Country Arts Board, ceases to be a member of the Board;

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 appointed to fill a casual vacancy will be appointed for the balance of the term of his or her predecessor.

Procedures of Trust

7. (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 number of trustees of the Trust or proxies of trustees, or both, equal to half the total number of trustees for the time being appointed to the Trust, plus one, constitutes a quorum of the Trust, 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.

Conflict of interest

8. (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;
 - (b) must not take part in any discussion by the Trust relating to that matter;
 - (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.

Penalty: Division 6 fine or division 6 imprisonment.

(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.

Functions and powers of Trust

9. (1) The Trust has the following functions:

- (a) to advise the Minister on matters of policy related to country arts;
- (b) to act as an advocate for country arts;
- (c) to manage the development of country arts;
- (d) to establish and maintain a Statewide information service for country arts;
- (e) to develop and manage Statewide touring programmes for country arts activities;
- (f) to provide, manage and control premises and facilities for country arts;
- (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;
- (h) to evaluate and be responsible for the financial and artistic performance of country arts activities funded by the Trust;
- (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.

Trust subject to direction and control of Minister

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

Committees

11. (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.

Delegation

12. (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;

(b) to a committee established by the Trust;

(c) to a Country Arts Board;

(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;

(b) may be absolute or conditional;

(c) does not derogate from the power of the Trust to act in any matter;

and

(d) is revocable at will by the Trust.

Staff

13. The Trust may employ, on terms and conditions fixed by the Trust, such persons as it considers necessary or desirable for the proper performance of the functions and powers conferred on the Trust and the Country Arts Boards by or under this Act.

Power to borrow money

14. (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.

Power to invest

15. 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.

Gifts, etc.

16. (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;
 - (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.

Budget

17. (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 authorized 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.

Accounts

18. (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.

Annual report

19. (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

Establishment of Country Arts Boards

20. (1) The following Country Arts Boards are established:

Central Region Country Arts Board
Eyre Peninsula Country Arts Board
Northern Country Arts Board
Riverland Country Arts Board
South East 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.

Membership of Country Arts Boards

21. (1) A Country Arts Board is to consist of eight members appointed by the Minister, of whom—

- (a) one will be appointed by the Minister to be the presiding member of the Board;
- (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) six will be persons nominated by local residents and persons of a prescribed class in accordance with procedures prescribed by the regulations.

(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 two 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.

Terms and conditions of office

22. (1) A member of a Country Arts Board will be appointed for such term—

(a) in the case of the presiding member—not exceeding three years;

or

(b) in any other case—not exceeding two years,

as the Minister specifies in the instrument of appointment.

(2) A member of a Country Arts Board is, on the expiration of his or her term of office, eligible for reappointment but a person cannot hold office as a member of a Board for more than six consecutive 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;

(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;

(b) completes a term of office and is not reappointed;

(c) resigns by written notice addressed to the Minister;

(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.

Procedures of Boards

23. (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.

Conflict of interest

24. (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;

(b) must not take part in any discussion by the Board relating to that matter;

(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.

Penalty: Division 6 fine or division 6 imprisonment.

(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.

Functions and powers of Boards

25. (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.

Committees

26. (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.

Delegation

27. (1) A Country Arts Board may 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;
 - (b) may be absolute or conditional;
 - (c) does not derogate from the power of the Board to act in any matter;
- and
- (d) is revocable at will by the Board.

Budget

28. (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 authorized 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

Protection from personal liability

29. (1) No personal liability attaches to—

- (a)* a member of the Trust;
- (b)* a member of the Trust's staff;
- (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.

Regulations

30. (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;
- (b)* regulate the conduct of persons on the Trust's property;
- (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 a division 7 fine 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

Repeal and Transitional Provisions

PART 1

REPEAL

Repeal of Cultural Trusts Act 1976

1. The *Cultural Trusts Act 1976* is repealed.

PART 2

TRANSITIONAL PROVISIONS

Transfer of property, etc. of Cultural Trusts, etc. to Country Arts Trust

2. (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.

Transfer of staff of Cultural Trusts, etc. to Country Arts Trust

3. 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

<i>Column 1</i>	<i>Column 2</i>
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.
South East Country Arts Board	South East Cultural Trust.

APPENDIX
Divisional Penalties

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

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

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

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

ROMA MITCHELL Governor