



AUSTRALIAN CAPITAL TERRITORY

Cultural Facilities Corporation Act 1997

No. 48 of 1997

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART II—CORPORATE STATUS

Division 1—Establishment, functions and powers

4. Establishment
5. Functions
6. Powers
7. Matters to be taken into account
8. Advisory committees
9. Companies, partnerships and joint ventures

Division 2—Membership

10. Constitution
11. Chairperson and Deputy Chairperson
12. Appointed members

Division 3—Meetings

13. Convening meetings
14. Procedure
15. Quorum

TABLE OF PROVISIONS—continued

Section

16. Disclosure of interest

PART III—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 1—Chief Executive Officer

17. Office and office holder

18. Role

Division 2—Staff and consultants

19. Staff

20. Consultants

PART IV—MANAGEMENT

21. Interpretation

22. Management focus

23. Business plans

24. Development of business plans

25. Modification of business plans

26. Application of Part VIII of Financial Management Act

PART V—MISCELLANEOUS

27. Provision of information

28. Ministerial directions

29. Quarterly reports

30. Annual report

31. Regulations

32. Vesting of assets

33. Development of first business plan

34. Repeal

SCHEDULE 1

DESIGNATED LOCATIONS

SCHEDULE 2

**APPOINTMENT AND TERMS AND CONDITIONS OF
APPOINTED MEMBERS**



AUSTRALIAN CAPITAL TERRITORY

Cultural Facilities Corporation Act 1997

No. 48 of 1997

An Act to establish the Cultural Facilities Corporation and for related purposes

[Notified in ACT Gazette S264: 19 September 1997]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Cultural Facilities Corporation Act 1997*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“Civic Square precinct” means the land constituting Blocks 18, 20 and 22, Section 19, Division of City, Canberra Central District;

“Corporation” means the Cultural Facilities Corporation;

“cultural activities” includes artistic, historical or otherwise cultural entertainments, displays and exhibitions;

“designated location” means—

(a) a location specified in Schedule 1; or

(b) a location specified by the Minister by notice in the *Gazette*;

“member” means a member of the Corporation;

“Plan” has the same meaning as in the *Land (Planning and Environment) Act 1991*;

“Public Sector Management Act” means the *Public Sector Management Act 1994*.

(2) A notice under paragraph (b) of the definition of “designated location” in subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

PART II—CORPORATE STATUS

Division 1—Establishment, functions and powers

Establishment

4. (1) The Cultural Facilities Corporation is established.

(2) The Corporation—

(a) is a body corporate; and

(b) shall have a common seal.

Functions

5. The functions of the Corporation are—

(a) to manage, develop, present, co-ordinate and promote cultural activities at designated locations and other places in the Territory;

(b) to establish and research collections;

- (c) to conserve and exhibit collections in the possession or under the control of the Corporation;
- (d) to manage and develop Civic Square precinct as a cultural focus of the Territory;
- (e) to undertake activities in co-operation with other persons where appropriate for the purpose of discharging its other functions; and
- (f) such other functions as are conferred on the Corporation by or under this Act or another law of the Territory.

Powers

6. (1) The Corporation has power to do all things necessary and convenient to be done in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Corporation has the same capacity as a natural person.

Matters to be taken into account

7. In exercising its powers under section 6, the Corporation shall have regard to—

- (a) any cultural policies or priorities of the Executive known to the Corporation; and
- (b) other cultural activities in the Territory.

Advisory committees

8. (1) The Corporation—

- (a) shall constitute advisory committees in relation to museum collections, historic places and the performing arts; and
- (b) may constitute such other advisory committees as it thinks necessary,

to assist in the performance of its functions.

(2) Subject to any direction by the Corporation, an advisory committee may determine the manner in which it is to perform its functions.

Companies, partnerships and joint ventures

9. (1) The Corporation shall not, without the written approval of the Minister—

- (a) form, or participate in the formation of, a company;
- (b) subscribe for, or purchase, company shares or securities;
- (c) enter into a partnership; or

- (d) participate in a joint venture.
- (2) The Minister's approval—
 - (a) may be given particularly or generally; and
 - (b) may be expressed to be subject to conditions specified in the approval.
- (3) Where the Corporation enters into a partnership or participates in a joint venture for which the Minister has given particular approval, the Minister shall—
 - (a) cause to be prepared a statement setting out particulars of, and the reasons for, the partnership or joint venture; and
 - (b) cause a copy of the statement to be laid before the Legislative Assembly with the next report given to him or her under subsection 29 (1).

Division 2—Membership

Constitution

- 10. (1) The Corporation shall consist of 7 members, as follows:
 - (a) a Chairperson and 5 other persons appointed by the Minister under clause 2 of Schedule 2;
 - (b) the Chief Executive Officer.
- (2) The performance of the functions and the exercise of the powers of the Corporation are not affected by reason only of there being a vacancy or vacancies in the membership of the Corporation.

Chairperson and Deputy Chairperson

- 11. (1) The Minister shall, by instrument, appoint a member to be Chairperson of the Corporation.
- (2) There shall be a Deputy Chairperson of the Corporation who shall be 1 of the members of the Corporation (other than the Chairperson) elected by members of the Corporation.

Appointed members

- 12. Schedule 2 has effect in relation to the members referred to in paragraph 10 (1) (a).

Division 3—Meetings

Convening meetings

13. (1) The Chairperson, or if the Chairperson is unable to do so, the Deputy Chairperson, shall convene such meetings of the Corporation—

- (a) as the Chairperson or the Deputy Chairperson, as the case requires, considers necessary for the efficient performance of its functions; or
- (b) as the Minister directs by notice in writing given to the Chairperson or the Deputy Chairperson.

(2) The Chief Executive Officer shall convene a meeting of the Corporation at the request of 3 members.

Procedure

14. (1) The Chairperson shall preside at all meetings of the Corporation at which he or she is present.

(2) Where the Chairperson is not present at a meeting the Deputy Chairperson shall preside.

(3) Where the Chairperson and the Deputy Chairperson are both absent from a meeting, the members present shall elect 1 of their number to preside.

(4) The member presiding at a meeting may give directions regarding the procedure to be followed in connection with the meeting.

(5) Questions arising at a meeting shall be decided by a majority of the votes of the members present and voting.

(6) The member presiding at a meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(7) The Corporation shall keep minutes of its proceedings.

(8) The Corporation may convene or hold a meeting by means of instantaneous communication.

(9) In subsection (8)—

“instantaneous communication” means communication by means of telephone, television or any other device which permits instantaneous audio communication with or without instantaneous visual communication.

Quorum

15. At a meeting of the Corporation, a majority of the members of the Corporation constitutes a quorum.

Disclosure of interest

16. (1) A member who has a direct or indirect pecuniary or personal interest in a matter which has been submitted for consideration by the Corporation shall disclose the nature of the interest at a meeting of the Corporation as soon as practicable after the relevant facts have come to the member's knowledge.

(2) The member presiding at a meeting at which an interest is disclosed shall cause that disclosure to be recorded in the minutes of the meeting.

(3) A member disclosing an interest shall not, unless the Minister or the Corporation determines otherwise—

- (a)** be present during any deliberation of the Corporation with respect to the relevant matter; or
- (b)** take part in any decision of the Corporation with respect to that matter.

(4) A member disclosing an interest shall not—

- (a)** be present during any deliberation of the Corporation with respect to a determination referred to in subsection (3); or
- (b)** take part in any decision of the Corporation with respect to such a determination.

(5) The Chairperson shall give a written report to the Minister about any determination of the Corporation under subsection (3) specifying the nature of the interest disclosed and the reasons for the determination.

PART III—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 1—Chief Executive Officer

Office and office holder

17. (1) There shall be a Chief Executive Officer of the Corporation.

(2) The Chief Executive shall create and maintain an Executive office in the Government Service the duties of which include performing the functions of the Chief Executive Officer.

(3) The Chief Executive Officer shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (2).

Role

18. The Chief Executive Officer shall, subject to and in accordance with the directions of the Corporation, manage the affairs of the Corporation.

Division 2—Staff and consultants

Staff

19. (1) The staff of the Corporation shall be employed under the Public Sector Management Act.

(2) The Public Sector Management Act applies in relation to the management of the staff of the Corporation.

Consultants

20. (1) The Corporation may engage consultants.

(2) Subsection (1) does not confer on the Corporation a power to enter into a contract of employment.

PART IV—MANAGEMENT

Interpretation

21. In this Part, unless the contrary intention appears—

“business plan”, in relation to a financial year, means the business plan of the Corporation as in force in respect of that year and includes any modification of that plan;

“Financial Management Act” means the *Financial Management Act 1996*.

Management focus

22. The functions of the Corporation shall be discharged—

- (a) in accordance with sound business practice; and
- (b) so as to achieve the business plan of the Corporation.

Business plans

23. (1) The business plan of the Corporation in respect of a financial year shall contain—

- (a) the statement of intent provided in accordance with section 58 of the Financial Management Act in respect of that financial year;
- (b) a description of the main undertakings of the Corporation in respect of that financial year and each of the next 2 financial years; and
- (c) a description of the business and corporate strategies of the Corporation in respect of that financial year and each of the next 2 financial years.

(2) The business plan of the Corporation shall include any other information that the Minister, by notice in writing to the Chief Executive Officer, requires be included.

Development of business plans

24. (1) The object of this section is to provide for the development by the Corporation, in consultation with the Minister, of an annual business plan for the Corporation within, as far as practicable, the first 2 months of each financial year, and shall be construed accordingly.

(2) The Corporation shall, as far as practicable within 1 month after the commencement of each financial year, submit to the Minister a draft business plan in respect of that financial year.

(3) The draft shall contain the statement, and descriptions of the type, referred to in subsection 23 (1).

(4) The Minister shall, in writing, as soon as practicable after receipt of the draft—

- (a) provide comments to the Corporation on the draft; or
- (b) advise the Corporation that he or she proposes to make no comments.

(5) If the Minister advises the Corporation that he or she proposes to make no comments, the provisions of the draft shall be the business plan of the Corporation in respect of that financial year.

(6) As soon as practicable after receipt of any comments by the Minister, the Corporation shall—

- (a) consider the comments;

- (b) consult with the Minister on any of the comments with which the Corporation does not agree with a view, as far as practicable, to reaching agreement; and
- (c) forward to the Minister a revised version of the business plan which, as far as practicable, gives effect to the Minister's comments and other matters agreed on during consultations with the Minister.

(7) If the Corporation forwards to the Minister a revised version of the business plan, the provisions of that plan shall be the business plan of the Corporation in respect of that financial year.

(8) The Minister shall, within 3 sitting days of a business plan coming into effect, cause a copy of the plan to be laid before the Legislative Assembly.

(9) Before laying a copy of the business plan before the Legislative Assembly the Minister may delete from the plan any part dealing with commercially sensitive information but then he or she shall lay before the Legislative Assembly, with the plan, a further statement setting out the general nature of the material deleted and the reason for the deletion.

Modification of business plans

25. (1) Subject to this section and to subsection 23 (1), the Corporation may modify the business plan of the Corporation in respect of a financial year.

(2) The Corporation may submit to the Minister a proposal to modify its business plan.

(3) The Minister shall, in writing, as soon as practicable after receipt of the proposal—

- (a) provide comments to the Corporation on the proposal; or
- (b) advise the Corporation that he or she proposes to make no comments.

(4) If the Minister advises the Corporation that he or she proposes to make no comments, the business plan shall be modified in accordance with the provisions of the proposal.

(5) As soon as practicable after receipt of any comments by the Minister, the Corporation shall—

- (a) consider the comments;

- (b) consult with the Minister on any of the comments with which the Corporation does not agree with a view, as far as practicable, to reaching agreement; and
- (c) forward to the Minister a revised version of the proposal which, as far as practicable, gives effect to the Minister's comments and other matters agreed on during consultations with the Minister.

(6) If the Corporation forwards to the Minister a revised version of the proposal, the business plan shall be modified in accordance with the provisions of the proposal.

(7) If a business plan is modified in accordance with a proposal or a revised proposal, the Minister shall cause a copy of the proposal or revised proposal, as the case may be, to be laid before the Legislative Assembly with the next report given to him or her under subsection 29 (1).

(8) Before laying a copy of the proposal or revised proposal before the Legislative Assembly the Minister may delete from the proposal or revised proposal any part dealing with commercially sensitive information but then he or she shall lay before the Legislative Assembly, with the proposal or revised proposal, a further statement setting out the general nature of the material deleted and the reason for the deletion.

Application of Part VIII of Financial Management Act

26. (1) Funds shall not be invested, or moneys borrowed, for the purposes of the Corporation except in accordance with Part VIII of the Financial Management Act.

(2) Subsection (1) does not limit the application of Part VIII of the Financial Management Act in relation to the Corporation.

PART V—MISCELLANEOUS

Provision of information

27. The Corporation shall furnish to the Minister such information relating to its operations as the Minister requires.

Ministerial directions

28. (1) The Minister may give written directions to the Corporation in relation to the performance of its functions, either generally or in relation to a particular matter.

(2) The Corporation shall give effect to any such direction.

(3) The Minister shall present a copy of any such direction to the Legislative Assembly within 5 sitting days after it is given to the Corporation.

(4) The Territory shall pay to the Corporation the reasonable costs of complying with a direction.

(5) The amount payable under subsection (4) shall be the amount agreed between the Corporation and the Treasurer or, failing agreement, as determined by the Chief Minister.

Quarterly reports

29. (1) The Corporation shall, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of this Act and of the Corporation during that quarter.

(2) In subsection (1)—

“quarter” means the period of 3 months commencing on 1 January, 1 April, 1 July or 1 October in each year.

(3) The Minister shall cause a copy of each report given to him or her under subsection (1) to be laid before the Legislative Assembly within 6 sitting days after the day on which he or she receives the report.

Annual report

30. The report prepared by the Corporation for the purposes of section 8 of the *Annual Reports (Government Agencies) Act 1995* shall include, in relation to the reporting period—

- (a) a copy of any direction given by the Minister under section 28 during the period; and
- (b) a statement by the Corporation about action taken during the period to give effect to any direction given by the Minister under that section.

Regulations

31. The Executive may make regulations for the purposes of this Act.

Vesting of assets

32. (1) Where the Minister is satisfied—

- (a) that an asset of the Territory, not being an interest in land—
 - (i) has been made available for use, or has been used, in connection with; or

- (ii) otherwise relates or substantially relates to;
the operations of the Corporation;
 - (b) that it would be appropriate to divest the asset from the Territory and transfer the asset to the Corporation; and
 - (c) that the Corporation, in writing, consents to the transfer;
- the Minister shall, by instrument, divest and transfer the asset accordingly.

(2) Where the Territory is—

- (a) a party to a contract or an agreement; or
- (b) subject to an obligation;

that relates to an asset referred to in subsection (1), the Minister may in the instrument referred to in that subsection or in another instrument declare that the Corporation is substituted for the Territory in respect of that contract, agreement or obligation, as the case may be.

(3) Where the contract, agreement or obligation relates to an asset as well as to other property, the Corporation shall be taken to be substituted for the Territory to the extent to which the contract, agreement or obligation relates to the asset.

(4) An instrument made by a Minister under this section takes effect according to its terms.

Development of first business plan

33. In respect of the financial year commencing on 1 July 1997, section 24 applies in relation to the Corporation as if subsection (2) were omitted and the following subsection substituted:

“(2) The Corporation shall, as far as practicable within 3 months after the commencement of this section, submit to the Minister a draft business plan in respect of the financial year commencing on 1 July 1997.”.

Repeal

34. (1) The following Acts are repealed:

Canberra Theatre Trust Act 1965

Canberra Theatre Trust Act 1967

Canberra Theatre Trust Act 1968

Canberra Theatre Trust Act 1974

Canberra Theatre Trust (Amendment) Act 1983

Canberra Theatre Trust (Amendment) Act (No. 2) 1983

Cultural Facilities Corporation No. 48, 1997

Canberra Theatre Trust (Amendment) Act 1986

Canberra Theatre Trust (Amendment) Act 1988

Canberra Theatre Trust (Amendment) Act 1992

(2) Any money or other property of the Canberra Theatre Trust immediately before the commencement of this section is, on that commencement by force of this subsection, vested in the Territory.

SCHEDULE 1

Section 3

DESIGNATED LOCATIONS

Canberra Theatre Centre
Canberra Museum & Gallery
Lanyon Historic Property
Calthorpe's House
Nolan Gallery

SCHEDULE 2

Section 12

APPOINTMENT AND TERMS AND CONDITIONS OF APPOINTED MEMBERS

Interpretation

1. In this Schedule, unless the contrary intention appears—
“appointed member” means a member appointed under clause 2.

Appointment and terms of office

2. (1) The persons referred to in paragraph 10 (1) (a) shall be appointed by the Minister by instrument.

(2) Before appointing a person under subclause (1), the Minister shall ensure that the following areas of expertise are represented amongst the appointed members:

- (a) experience consisting of working in a cultural or heritage field;
 - (b) knowledge of financial grants programs related to cultural or heritage matters.
- (3) An appointed member holds office, subject to this Act—
- (a) for the period specified in the instrument of appointment; and
 - (b) on such terms and conditions (if any) in relation to matters not provided for by this Act as are specified in the instrument of appointment.
- (4) The period of the appointment shall not be more than 3 years.
- (5) A former appointed member is eligible for re-appointment.

SCHEDULE 2—continued

Remuneration and allowances

3. An appointed member is entitled to such remuneration, allowances and other entitlements—

- (a) as are determined by the Remuneration Tribunal in respect of an appointed member; or
- (b) if there is no such determination—as are determined by the Chief Minister in respect of an appointed member by an interim determination under the *Remuneration Tribunal Act 1995*.

Resignation

4. An appointed member may resign his or her office by writing signed by the member and delivered to the Minister.

Termination of appointment

5. (1) The Minister may terminate the appointment of an appointed member because of the misbehaviour or physical or mental incapacity of the member.

(2) If an appointed member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b) is absent, except on leave, for 3 consecutive meetings;
- (c) without reasonable excuse contravenes section 16; or
- (d) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer;

the Minister shall terminate the appointment of that member.

Acting appointments

6. (1) The Minister may, by instrument, appoint a suitable person to act as an appointed member—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

SCHEDULE 2—continued

(2) A person appointed to act as an appointed member during a vacancy in the office of a member shall not so act continuously for more than 12 months.

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subclause (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

(4) In this section—

“suitable person”, in relation to a member of the Corporation, means a person who would, in the opinion of the Minister, be suitable in accordance with subclause 2 (2) for appointment to the office of the member if that office were to become permanently vacant.

[Presentation speech made in Assembly on 8 May 1997]