

EXPLANATORY STATEMENT

CANBERRA INSTITUTE OF THE ARTS ORDINANCE 1988

(NO. 1 OF 1988)

The Canberra Institute of the Arts Ordinance (the Ordinance) establishes the Canberra Institute of the Arts as an independent educational Institute to foster the achievement of excellence in the study at tertiary and other levels of music, visual arts and crafts and other fields of the arts.

The Institute consists of the Canberra School of Music and the Canberra School of Art which were formerly administrative organisations without statutory basis. The addition of new schools is provided for.

The Ordinance is conceptually similar to the ACT Institute of Technical and Further Education Ordinance 1987 (Ordinance No. 71 of 1987). However, the Institute is expected to be a more independent body similar to a University and is invested with greater freedom of action and powers of self-government. Accordingly, there is no general power for the Government to direct the Institute although the Minister, the Minister for Finance and the Treasurer have specific powers of supervision and control over financial and Statute making functions.

The Institute is governed by a Board consisting of an Executive Chairperson and the Directors of its schools. Government of the Institute as a whole is vested in the Executive Chairperson and the ordinary running of each School is under the control of its Director.

An advisory Council is provided for which will include members of the Board, Government representatives and elected staff and student representatives.

Details of the Ordinance are set out in the attachment.

**ISSUED BY AUTHORITY OF THE
MINISTER FOR THE ARTS AND
TERRITORIES**

ATTACHMENT

CANBERRA INSTITUTE OF THE ARTS ORDINANCE 1988

Part I - Preliminary

Section 1 cites the short title of the Ordinance as the Canberra Institute of the Arts Ordinance 1988.

Section 2 provides that the Ordinance shall come into operation on a date fixed by the Minister by notice in the Gazette.

Section 3 provides for interpretation.

Part II - Canberra Institute of the Arts

Section 4 provides for the establishment of the Canberra Institute of the Arts ("the Institute") as a body corporate.

Section 5 provides that the Institute shall contain the following schools:

- (a) the Canberra School of Art;
- (b) the Canberra School of Music;
- (c) such other Schools as are prescribed.

Section 6 provides for the functions of the Institute.

Subsection 6(1) provides that the functions are as follows:

- (a) to conduct an educational institution for the purpose of fostering the achievement of excellence in the study of music, visual arts and crafts and other fields determined by the Board;
- (b) to provide courses and programs in the arts and to use its facilities to advance and develop knowledge;
- (c) to promote the development of community awareness of the arts;
- (d) to confer qualifications and awards;
- (e) to co-operate with other institutions, persons and bodies; and
- (f) to do anything incidental to any of its functions.

Subsection 6(2) provides for the functions to be exercised within or outside Australia.

Section 7 provides for the powers of the Institute.

Subsection 7(1) sets out the powers of the Institute as follows:

- (a) to enter into contracts;
- (b) to build;
- (c) to occupy, use and control any Commonwealth land made available to it;
- (d) to accept gifts, grants, devises and bequests;
- (e) to provide scholarships;
- (f) to appoint agents and attorneys;
- (g) to participate in companies;
- (h) to enter into partnerships;
- (i) to participate in joint ventures;
- (j) to obtain commercial sponsorship for the Institute; and
- (k) to do anything incidental to any of its powers.

Subsection 7(2) provides for a limit of \$100,000.00 on the value of contracts which the Institute may enter into without Ministerial approval.

Subsection 7(3) provides for the exercise of powers by the Institute within or outside Australia.

Section 8 provides for limitations on participation in companies.

Subsection 8(1) requires the approval of the Minister for the Institute to join a company.

Subsection 8(2) provides for the form of the approval.

Subsection 8(3) provides for the Minister to table particulars of the Institute's participation in a company.

Subsection 8(4) provides for the Institute to ensure that audit arrangements for a company which it controls are acceptable to its own auditors. Under the Audit Regulations the auditor of the Institute will be the Auditor General.

Subsection 8(5) provides for the Institute to exert control over a company in which it has a controlling interest and prevent it engaging in unauthorised borrowing activities.

Subsection 8(6) provides that subsection (5) relates to all borrowing activities.

Subsection 8(7) provides for approval of borrowing activities.

Subsection 8(8) provides for certain transactions to be deemed to be borrowing.

Section 8(9) provides that the limitations on raising money do not apply to donations, gifts or genuine payments for services rendered.

Section 9 provides for limitations on the entry into partnerships by the Institute.

Subsection 9(1) requires the approval of the Minister for entry into a partnership.

Subsection 9(2) provides for the form of the approval.

Subsection 9(3) provides for the Minister to table particulars of the Institute's participation in a partnership.

Subsection 9(4) provides that the Institute is to endeavour to ensure that the audit arrangements for a partnership which it controls are acceptable to the auditors of the Institute.

Section 10 provides for limitations on participation in joint ventures.

~~Subsection 10(1) requires the approval of the Minister for entry into a joint venture.~~

Subsection 10(2) provides for the form of the approval.

Subsection 10(3) provides for the Minister to table particulars of the Institute's participation in a joint venture.

Subsection 10(4) provides for the Institute to ensure that audit arrangements for a joint venture in which it is a controlling participant shall be acceptable to its own auditors.

Part III - Board and Council of the Institute

Division 1 - Board

Section 11 provides for the Institute to be governed by the Board of the Canberra Institute of the Arts ("the Board").

Section 12 provides for the membership of the Board.

Subsection 12(1) provides for the Board to consist of the Executive Chairperson and the Director of each School.

Subsection 12(2) provides for the Board to carry out its functions notwithstanding that there is a vacancy in its membership.

Section 13 relates to disclosure of interests.

Subsection 13(1) provides for a member of the Board who has a direct or indirect financial interest in a matter being considered by the Board to disclose the nature of his or her interest at a meeting of the Board.

Subsection 13(2) provides for the disclosure to be recorded in the minutes of the meeting and for the member to withdraw from consideration of the matter unless the Board decides otherwise.

Subsections 13(3) and (4) provide that this section does not apply where the interest of the member arises directly from the performance of his or her functions.

Section 14 relates to meetings of the Board.

Subsection 14(1) provides that the Board may determine times and places for meetings.

Subsection 14(2) provides that at least two meetings a year shall be held.

Subsection 14(3) provides that the Executive Chairperson may at any time convene a meeting.

Subsection 14(4) provides that the Minister may convene meetings.

Subsection 14(5) provides for the Executive Chairperson to preside at meetings at which he or she is present.

Subsection 14(6) provides for the members of the Board to elect a member to preside at the meeting if the Executive Chairperson is not present.

Subsection 14(7) provides for a quorum of two.

Subsection 14(8) provides that where a member withdraws under section 13(2) this does not affect the quorum.

Subsection 14(9) provides that questions arising are to be determined by a majority of the members present and voting.

Subsection 14(10) provides that the person presiding has a deliberative vote but does not have a casting vote.

Subsection 14(11) provides for the Board to keep a record of proceedings.

Subsection 14(12) provides for the Board to regulate the procedure of its meetings as it sees fit.

Section 15 provides for the Board to appoint committees to advise and assist it in performing any of its functions.

Section 16 relates to Statutes of the Institute.

Subsection 16(1) empowers the Board to make Statutes with respect to any of the following matters:

- (a) the management, good government and discipline of the Institute;
- (b) the imposition of penalties upon students in the Institute for contravention of a Statute;
- (c) the making of rules to give effect to a Statute;
- (d) the custody and use of the common seal;
- (e) the duties of Directors;
- (f) the persons who are to constitute the teaching staff of a School;
- (g) the persons who are to constitute the non-teaching staff of the Institute;
- (h) the persons who are to constitute the students of a School;
- (j) superannuation;
- (k) ~~the admission of persons to courses of study or examinations;~~
- (m) degrees and awards;
- (n) scholarships, bursaries and prizes;
- (p) progress of students;
- (q) student loan funds;
- (r) the provision and use of amenities and services;
- (s) association with other bodies;
- (t) elections to the Council; and
- (u) any other matter authorised by the Ordinance or necessary or convenient for giving effect to the Ordinance.

Subsection 16(2) provides for the making of Statutes in relation to parking.

Subsection 16(3) provides for parking offences under subsection 16(2) to be consistent with the laws of the Territory.

Section 17 relates to approval and notification of Statutes.

Subsection 17(1) provides for Statutes to be sealed and submitted to the Minister for approval.

Subsection 17(2) provides for a Statute approved by the Minister to be notified in the Gazette and to have the force of law.

Subsection 17(3) provides for the consecutive numbering of Statutes.

Subsection 17(4) provides for the details of gazettal.

Subsection 17(5) provides for a Government Printer's copy of a Statute to be evidence of the Statute.

Section 18 provides for tabling and disallowance of Statutes.

Subsection 18(1) requires the Minister to table Statutes.

Subsection 18(2) provides that if a Statute is not tabled it is void.

Subsections 18(3) and (4) apply the provisions of the Seat of Government (Administration) Act 1910, which relate to disallowance of Ordinances, to Statutes so that either House of Parliament may disallow a Statute as if it were an Ordinance.

Division 2 - Council

Section 19 establishes a Council of the Canberra Institute of the Arts.

Section 20 provides for the functions of the Council.

Subsection 20(1) provides that the functions of the Council are to advise and assist the Board.

Section 20(2) allows the council to determine its own procedures and presiding officer.

Section 21 provides for the membership of the Council.

Subsection 21(1) provides that the Council shall consist of the Executive Chairperson, the Director of each School, five appointed members and two elected members.

Subsection 21(2) provides for the appointed members to be appointed by the Minister as part-time members.

Subsection 21(3) preserves the validity of the membership of an appointed member notwithstanding any technical defect in the appointment.

Section 22 provides for elected members.

Subsection 22(1) provides that one member is to be a student elected by the students and one is to be a staff member elected by the staff.

Subsection 22(2) provides for elected members to be elected in accordance with the Statutes and hold office for a term not exceeding 2 years as provided in the Statutes and to be at least 18 years old.

Part IV - Executive Chairperson, Directors and Staff

Division 1 - Executive Chairperson

Section 23 relates to the Executive Chairperson.

Subsection 23(1) provides that there shall be an Executive Chairperson appointed by the Minister.

Subsection 23(2) provides for the Executive Chairperson to be appointed for a period not exceeding four years.

Subsection 23(3) provides that the Executive Chairperson holds office on such terms and conditions, in respect of matters not provided for by the Ordinance, as are determined by the Minister.

Subsection 23(4) provides that an Executive Chairperson shall not hold office for more than two consecutive terms.

Subsection 23(5) provides that the Executive Chairperson may be referred to as the Executive Chairman or the Executive Chairwoman as the case requires.

Section 24 relates to the functions of the Executive Chairperson.

Subsection 24(1) provides for the Executive Chairperson to manage the affairs of the Institute subject to the directions and policies of the Board.

Subsection 24(2) provides that anything done on behalf of the Institute by the Executive Chairperson is deemed to have been done by the Institute.

Section 25 provides for the appointment of an acting Executive Chairperson.

Subsection 25(1) provides for the appointment of an acting Executive Chairperson for a period of not more than 12 months during a vacancy in the office or the absence or disability of the Executive Chairperson.

Subsection 25(2) provides for an appointment to have effect only in such circumstances as are specified by the Minister in the instrument of appointment.

Subsection 25(3) provides for the Minister to be able to determine terms and conditions of appointment and terminate an acting appointment at any time.

Subsection 25(4) provides for an acting Executive Chairperson to continue to act if the office becomes vacant while he or she is acting.

Subsection 25(5) provides for the resignation of an acting Executive Chairperson.

Subsection 25(6) provides for a person acting to have all the powers and functions of the Executive Chairperson.

Subsection 25(7) provides that the actions of an acting Executive Chairperson are not invalid because of a technical defect in his or her appointment.

Section 26 provides the remuneration of the Executive Chairperson to be fixed by the Remuneration Tribunal.

Section 27 provides for the Minister to grant leave of absence to the Executive Chairperson.

Section 28 provides that the Executive Chairperson may resign.

Division 2 - Directors of Schools and staff

Section 29 provides for Directors of Schools.

Subsection 29(1) provides that there shall be a Director of each School who shall be appointed by the Minister.

Subsection 29(2) provides that a Director cannot be more than 65 years of age.

Subsection 29(3) provides that the position of Director is a full-time office and that the appointment shall not exceed 7 years.

Subsection 29(4) provides that a Director holds office on such terms and conditions, in respect of matters not provided for by the Ordinance, as are determined by the Minister.

Section 30 provides that a Director shall perform duties as prescribed by the Statutes or as the Board determines.

Section 31 provides for the appointment of acting Directors.

Subsection 31(1) provides for the Board to appoint an acting Director for a period of not more than 12 months during a vacancy in the office of Director or during the absence or disability of a Director.

Subsection 31(2) provides for an appointment of an acting Director to come into effect only in such circumstances as are specified in the instrument of appointment.

Subsection 13(3) provides for the Board to determine terms and conditions of appointment of an acting Director and to terminate such an appointment at any time.

Subsection 31(4) provides that where a person is acting as Director during the absence of a Director and the office becomes vacant the person may continue to act until the Board otherwise determines or the vacancy is filled or a period of 12 months elapses.

Subsection 31(5) provides for the resignation of an acting Director.

Subsection 31(6) provides for an acting Director to have all the powers and functions of the Director.

Subsection 31(7) provides that the actions of an acting Director are not invalid because of a technical defect in his or her appointment.

Section 32 provides for remuneration of Directors.

Subsection 32(1) and (2) provide that Directors are to be paid such remuneration as is determined by the Remuneration Tribunal and such allowances as are prescribed in the regulations.

Subsection 32(3) provides that in the absence of a Tribunal determination the Minister may determine a Director's remuneration.

Section 33 provides for the resignation of Directors.

Section 34 provides for the Board to be able to grant leave of absence to a Director.

Division 3 - Staff

Section 35 relates to the staff of the Institute.

Subsection 35(1) provides that the staff of the Institute are to consist of such persons employed by the Executive Chairperson, on behalf of the Institute, as the Board thinks necessary and persons made available to the Institute under the Commonwealth Teaching Service Act 1972.

Subsection 35(2) provides for paragraph 35(1)(b) to be terminated by the Minister by notice in the Gazette.

Subsection 35(3) provides for the terms and conditions of employment under section 35 to be determined by the Board

Part V Finance

Section 36 provides that money appropriated for the Institute by Parliament is payable to the Institute and that the Minister for Finance may give directions as to the amounts and times at which it is to be paid to the Institute.

Section 37 relates to fees payable to the Institute.

Subsection 37(1) provides that there are payable to Institute such fees as the Minister determines by notice in the Gazette.

Subsection 37(2) provides that the Board may make the following determinations of fees:

- (a) voluntary fees;
- (b) fees for the provision of non-academic amenities or services;
- (c) fees for student organisations;
- (d) fees for residential accommodation;
- (e) fees in respect of the provision of an administrative service;
- (f) fees of a kind made under the Overseas Students Charge Act 1979; or
- (g) post-graduate training for persons who already have qualifications.

Subsection 37(3) provides for fees for post-graduate training, referred to in (g) above, to be specified by the Minister for Employment of Education and Training.

Subsection 37(4) provides for the exemption of students from the payment of fees.

Section 38 provides for the levying of the higher education administration charge. It provides essentially that students are liable to pay a higher education administration charge on the same basis as students undertaking other tertiary studies. The fee is payable to the Commonwealth.

Subsection 38(1) provides for interpretation.

Subsection 38(2) requires the Institute to impose a Higher Education Administration charge in each year from 1988.

Subsection 38(3) provides that students are liable to pay the charge if they are enrolled at the Institute or are undertaking a course at the Institute although not enrolled.

Subsection 38(4) provides that students are liable to pay the charge on the date they enrol or, if not enrolled, on a date fixed by the Minister for Employment, Education and Training.

Subsection 38(5) provides that a student is liable to a charge only once in a year.

Subsections 38(6) and (7) exempts students paying an overseas students charge and certain pensioners and their spouses.

Subsection 38(8) provides that the amount of the charge is that specified under the States Grants (Tertiary Education Assistance) Act 1984.

Subsection 38(9) terminates the enrolment of students who do not pay the charge.

Subsection 38(10) provides that where an enrolment is valid for more than one year the charge is payable for each year in which a part of the course is undertaken.

Subsection 38(11) allows the Board to fix the final day for payment.

Section 39 provides for the Institute to prepare estimates and lodge those estimates with the Minister.

Section 40 provides that the money of the Institute consists of money paid to the Institute under section 36 and any other money, other than trust money, paid to the Institute.

Section 41 relates to the application of monies by the Institute.

Subsection 41(1) provides that the money of the Institute is only to be applied for payment of expenses, charges, obligations and liabilities of the Institute; payment of remuneration and allowances under the Ordinance; and in making any other payments required or permitted to be made by the Institute.

Subsection 41(2) provides that non-trust monies shall only be expended in accordance with the estimates approved by the Minister.

Subsection 41(3) provides for the investment of the Institute's reserves on deposit in a bank, in Commonwealth securities or in any other manner approved by the Treasurer.

Section 42 provides that the Minister for Finance may lend money to the Institute.

Section 43 relates to borrowing otherwise than from the Commonwealth.

Subsection 43(1) provides for the Institute, with the approval of the Treasurer, to borrow money.

Subsections 43(2) and (3) provide for the form of the Treasurer's approval.

Section 44 relates to dealings with securities.

Subsection 44(1) provides for the Institute to deal with securities, with the approval of the Treasurer.

Subsection 44(2) provides for such an approval to be in writing.

Subsection 44(5) is an interpretation provision.

Section 45 provides for the giving of securities by the Institute.

Section 46 provides that the Institute shall not borrow or make or raise money except in accordance with sections 42, 43 and 44.

Section 47 relates to trust money and trust property and provides that trust monies shall be kept in a trust account and invested only in a proper manner.

Section 48 exempts the Institute from State and Territory taxes.

Part VI - Miscellaneous

Section 49 provides for delegation by the Board.

Subsection 49(1) provides for the Board to delegate to the Executive Chairperson, a Director, a committee or a member of the staff of the Institute all or any of its powers.

Subsection 49(2) provides for a power exercised by a delegate to be deemed to have been exercised by the Board.

Subsection 49(3) provides that a power of delegation may be revoked, does not prevent the exercise of the power by the Board and continues in force notwithstanding a change in the membership of the Board.

Subsection 49(4) provides for the application of provisions of the Interpretation Ordinance 1967 to a delegation.

Subsection 49(5) provides for the Executive Chairperson to provide a certificate relating to a delegation and for that certificate to be prima facie evidence of that matter.

Subsection 49(6) provides that a document purporting to be a certificate by the Executive Chairperson shall be deemed to be such a certificate unless the contrary is established.

Section 50 relates to delegation by the Executive Chairperson.

Subsection 50(1) provides that the Executive Chairperson may delegate all or any of his or her powers to a Director or a member of the staff of the Institute.

Subsection 50(2) provides for a power exercised by a delegate to be deemed to have been exercised by the Executive Chairperson.

Subsection 50(3) provides that delegation does not affect the exercise of the power or a function by the Executive Chairperson.

Section 51 provides for delegation by Directors.

Section 51(1) provides for a Director to delegate all of or any of his or her powers to a member of the staff of the Institute.

Subsection 51(2) provides that a power exercised by a delegate is deemed to have been exercised by the Director.

Subsection 51(3) provides that a delegation does not prevent the exercise of a power or function by the Director.

Section 52 allows the Minister to make regulations prescribing matters for the purposes of the Ordinance.