

Queensland



ANNO VICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE

No. 45 of 1977

An Act to constitute a corporation for the purpose of encouraging the development of the film industry in Queensland; to make provision with respect to the functions and powers of the Corporation and for related purposes

[ASSENTED TO 3RD OCTOBER, 1977]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title. This Act may be cited as the *Queensland Film Industry Development Act 1977*.

2. Commencement. This Act shall come into operation on a date to be appointed by Proclamation.

3. Duration. (1) This Act shall remain in force for a period of ten years from the commencement thereof and no longer.

- (2) The expiry of this Act shall not affect—
- (a) the previous operation thereof, or anything duly done or suffered thereunder;
 - (b) any right, privilege, obligation or liability acquired, accrued, or incurred thereunder;
 - (c) the operation of any Order in Council made under this Act or the power to revoke or vary such Order; or
 - (d) any legal proceeding, arbitration or remedy in respect of such right, privilege, obligation or liability, and any such legal proceeding, arbitration or remedy may be instituted, enforced or continued as if this Act had not expired.

(3) Prior to the expiration of this Act, the Governor in Council may, by Order in Council, declare the assets and liabilities of the Corporation to be vested in such manner and in such person or body as the Governor in Council thinks fit and make such ancilliary provisions as are necessary or desirable to secure such vesting and thereupon such assets and liabilities shall vest accordingly.

4. Arrangement. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1–5);

PART II—QUEENSLAND FILM CORPORATION;

Division I—Constitution, Functions and Powers of Corporation
(ss. 6–11);

Division II—Membership of Corporation (ss. 12–18);

Division III—Business and Proceedings of Corporation
(ss. 19–25);

PART III—APPLICATIONS FOR ASSISTANCE (ss. 26–34);

PART IV—FINANCIAL PROVISIONS (ss. 35–41);

PART V—GENERAL PROVISIONS (ss. 42–43).

5. Interpretation. In this Act, save where the contrary intention appears—

“Chairman” means the chairman of the Corporation;

“Corporation” means the Queensland Film Corporation established and incorporated under this Act;

“department” means a department of the Government of the State and includes—

(a) the Railway Department;

(b) where the case requires it, a sub-department, branch or section of a department;

(c) a Crown corporation or instrumentality or a statutory corporation or instrumentality representing the Crown the expenditure of which is subject to appropriation by Parliament;

“Deputy Chairman” means the deputy chairman of the Corporation;

“film” means an aggregate of images, or of images and sounds, embodied in any material;

- “film industry” means those businesses or activities concerned with the production, distribution or exhibition of films;
- “financial assistance” includes—
- (a) a loan or an investment of money;
 - (b) the guarantee of the repayment of, and payment of interest on, a loan (including a bank overdraft);
- “financial year” means the period of 12 months ending on 30 June in any year;
- “Fund” means the Film Industry Development Fund established under this Act;
- “member” means a person occupying any of the offices of member of the Corporation including that of Chairman;
- “Minister” means the Premier of the State or other Minister of the Crown who, at the material time, is charged with the administration of this Act and includes a Minister of the Crown who is temporarily performing the duties of the Minister;
- “Treasurer” means the Treasurer of the State and includes a Minister of the Crown who is temporarily performing the duties of the Treasurer.

PART II—QUEENSLAND FILM CORPORATION

Division I—Constitution, Functions and Powers of Corporation

6. Constitution of Corporation. (1) There is hereby constituted a body corporate under the name and style “Queensland Film Corporation” which, by that name and style, shall have a common seal, and shall be capable in law of suing and being sued in its corporate name and of acquiring, holding and disposing of land and other property, of granting and taking leases of land and other property, and of doing and suffering all such other acts and things as bodies corporate may in law do and suffer.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Corporation affixed to any document and, until the contrary is proved, shall presume that it was duly affixed.

(3) The Corporation represents the Crown and shall have and may exercise all the powers, privileges, rights and remedies of the Crown.

7. Common seal. (1) The common seal of the Corporation shall be in the custody of the Chairman or such other member (other than a delegate member) as the Corporation may determine.

(2) The common seal shall not be affixed to a document except under the authority of a resolution of the Corporation and shall be affixed by the Chairman (or by the person who for the time being performs as executive member of the Corporation the duties of the Chairman) or by such other member who has custody of the seal in accordance with subsection (1).

8. Corporation subject to direction of Minister. In the exercise and performance of its powers, authorities, duties and functions the Corporation shall, except where it makes or is required to make a recommendation to the Minister, be subject to the general control and direction of the Minister.

9. Functions of Corporation. The functions of the Corporation are—

- (a) to encourage the development of the film industry in the State;
- (b) to continuously review the state of development of the film industry in the State;
- (c) to advise the Minister on matters concerned with the development of the film industry in the State;
- (d) to administer financial and other assistance provided by the Government of the State to the film industry; and
- (e) to co-ordinate the provision of all forms of assistance whether made available by the Government of the State or otherwise.

10. Powers to discharge functions. (1) The Corporation has and may exercise such powers as are necessary or desirable to allow the proper discharge by it of its functions or any of them.

(2) Without limiting the powers of the Corporation conferred by this Act or had by the Corporation in its corporate capacity the Corporation has power—

- (a) to investigate and make recommendations to the Minister on applications for financial and other assistance;
- (b) to provide financial assistance for the purpose of this Act on such terms and conditions as the Governor in Council approves;
- (c) to levy such fees and charges in respect of the provision of financial assistance as are prescribed by Order in Council,
- (d) to acquire plant, machinery and other equipment and to sell, lease or otherwise make it available to the film industry on such terms and conditions as it thinks fit;
- (e) to accept gifts, devises, bequests and assignments made to the Corporation (whether on trust or otherwise);
- (f) to provide advice and such other assistance to the film industry as it thinks fit and on such terms and conditions as it thinks fit;
- (g) to undertake research and investigation into any matter related to the functions of the Corporation;
- (h) to acquire rights in respect of films;
- (i) to act as trustee of moneys, films or other property vested in the Corporation upon trust;
- (j) to engage persons having suitable qualifications or experience as consultants to the Corporation; and
- (k) to exercise such other powers and functions and to perform such other duties as are prescribed.

(3) Financial assistance shall be provided by the Corporation under subsection (2) only with the prior approval of the Governor in Council.

(4) Financial assistance may be provided to an applicant under arrangements that entitle the Corporation to receive a share of the proceeds derived from the sale, hire or exhibition of the film the subject of the application or the inclusion of the film in television programmes but do not render the Corporation liable for any debts incurred by the applicant.

(5) Notwithstanding anything contained in this Act, any money, films or other property held by the Corporation upon trust shall be dealt with in accordance with the powers and duties of the Corporation as trustee.

11. Departments' production of films. To assist the Corporation in the performance of its functions all departments intending to produce films shall advise the Corporation accordingly.

Division II—Membership of Corporation

12. Members of Corporation. (1) The Corporation shall consist of ten members, being—

- (a) the Co-ordinator-General who shall be a member *ex officio* and the Chairman;
- (b) the Director of Industrial Development who shall be a member *ex officio* and the Deputy Chairman;
- (c) the Under Treasurer who shall be a member *ex officio*;
- (d) one person representative of the production side of the film industry;
- (e) one person representative of the distribution or exhibition side of the film industry;
- (f) one person representative of television interests;
- (g) two persons representative of the business community;
- (h) one person representative of the provincial areas of the State; and
- (i) a member of the Legislative Assembly.

(2) Members, other than members *ex officio*, shall be appointed by the Governor in Council, on the recommendation of the Minister, by notification published in the Gazette.

(3) Members, other than members *ex officio*, shall be persons who have not attained the age of 70 years at date of their appointment.

(4) The Corporation shall be taken to be duly established on and from the date of the first appointment of members thereof.

(5) A member of the Legislative Assembly is eligible to accept and hold an appointment as member of the Corporation and to receive any fee or other remuneration or otherwise profit in respect thereof and his seat as a member of the Legislative Assembly shall not become vacant upon his accepting or holding such appointment, notwithstanding any other Act.

(6) A person is not, by reason of his membership of the Corporation, one to whom any provision of section 5 of the *Officials in Parliament Act 1896–1975* applies; neither shall his election as a member of the Legislative Assembly be null and void nor shall a writ issue for the election of a member in his stead by reason of his membership of the Corporation notwithstanding that section.

13. Term of appointment. (1) Every member, other than a member *ex officio*, shall be appointed for a term of three years from the date of his appointment, or such less term as is specified in his notification of appointment, and shall, if otherwise qualified, be eligible for reappointment as member.

(2) In every case, unless his office is sooner vacated as prescribed, every member's appointment shall be deemed to continue until his successor, duly appointed in accordance with this Act, assumes office as a member.

14. Delegate members. (1) If for any reason it is not practicable for a member *ex officio* to attend any meeting of the Corporation, he may and is hereby authorized to appoint an officer of his department to attend the meeting as his delegate.

(2) A person appointed by the Chairman or, as the case may be, Deputy Chairman to be his delegate shall not by reason only of his appointment as delegate member be Chairman or, as the case may be, Deputy Chairman.

(3) Notification in writing by a member *ex officio* to the Corporation authorizing an officer of his department to attend a meeting of the Corporation as his delegate is sufficient authority for such person to attend the meeting.

(4) A delegate member appointed under subsection (1) shall be entitled, in the absence of the member whose delegate he is, to attend the meeting in respect of which he was appointed and, while so attending, shall be deemed to be a member.

15. Termination of membership. (1) A member, other than a member *ex officio*, may by writing furnished to the Minister, resign his office at any time.

(2) The Governor in Council may remove from office a member, other than a member *ex officio*, if—

- (a) he becomes incapable, in the opinion of the Governor in Council, of discharging the duties of his office;
- (b) he is, in the opinion of the Governor in Council, incompetent or unfit to hold office; or
- (c) he is absent without the Corporation's leave first obtained from three consecutive ordinary meetings of the Corporation of which notice has been duly given to him.

16. Vacation of office. (1) A member shall be deemed to have vacated his office—

- (a) in the event of his resignation, upon the receipt by the Minister of his notice of resignation;
- (b) in the event of his removal, upon the issue by the Minister of notice of his removal;
- (c) if he ceases to be qualified to be a member;
- (d) if he attains the age of 70 years; or
- (e) if he dies.

(2) If a vacancy occurs in the office of a member, other than a member *ex officio*, during the currency of his term of appointment another person shall be appointed as a member by the Governor in Council on the recommendation of the Minister.

(3) The appointment of a person appointed to fill a vacancy shall continue and be deemed to continue for as long as the appointment of his predecessor had the vacancy not occurred.

17. Indemnity to members. Each member shall be indemnified from the fund in respect of any damages, loss or costs occasioned by any act or omission done or made by him bona fide on behalf of or in the interests of the Corporation.

18. Fees and allowances. (1) Subject to subsection (2), each member or delegate member shall be paid such fees and allowances as the Minister from time to time determines.

(2) Fees and allowances shall not be paid by the Corporation to a member *ex officio*, or the delegate of such a member, for attendance at any meeting of the Corporation held during ordinary office working hours of that member or delegate member.

Division III—Business and Proceedings of Corporation

19. Conduct of business. Subject to this Act, the Corporation shall conduct its business in such manner as it thinks fit.

20. Chairman to convene meetings. (1) The Chairman shall convene such meetings of the Corporation as are, in his opinion, necessary for the efficient conduct of its affairs.

(2) Notwithstanding subsection (1), the Chairman shall convene a meeting of the Corporation when requested in writing to do so by two other members.

21. Quorum. (1) The quorum of the Corporation shall consist of a majority of the total number of members for the time being holding office as members.

(2) A duly convened meeting of the Corporation at which a quorum is present shall be competent to transact any business of the Corporation and shall have and may exercise all the powers, authorities, functions and duties by this Act conferred or imposed upon the Corporation.

22. Conduct of meetings. (1) Subject to this section, the Corporation shall conduct the proceedings of its meetings in such manner as it thinks fit.

(2) The Chairman or, in his absence, the Deputy Chairman shall preside at all meetings at which he is present and if the Deputy Chairman presides he shall exercise all the powers of the Chairman.

(3) If the Chairman and the Deputy Chairman are both absent from any meeting of the Corporation, the members who are present, if they constitute a quorum, may appoint one of their number to act as chairman of the meeting and such appointee may preside at the meeting and exercise the powers of the Chairman.

(4) The Corporation shall keep a record of the proceedings of its meetings.

(5) The Corporation shall exercise or perform a power, authority, function, duty or obligation by majority vote of the members present and voting at the meeting at which such exercise or performance is to occur.

(6) A member who, being present at a meeting and entitled to vote, abstains from voting shall be deemed to have voted in the negative.

(7) The person who is duly presiding at a meeting, if he is entitled to vote, shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

23. Validity of proceedings. An act, proceeding or agreement of the Corporation shall not be invalidated or in any way prejudiced by reason only of the fact that at the time such act was done, proceeding taken or agreement made—

- (a) there were vacancies in the membership of the Corporation not exceeding one-half of the total number of members for the time being required to constitute the Corporation;
- (b) all members for the time being holding office were not present at the meeting at which such act or proceeding or the making of such agreement was done or authorized; or
- (c) there is a defect in the membership or appointment of any one or more of the members who joined in doing such act or taking such proceeding or making such agreement or in authorizing such act, proceeding or agreement,

or of any combination of such facts.

24. Disclosure of interest. (1) If a member has any pecuniary interest, direct or indirect, in an agreement or proposed agreement or other matter and is present at a meeting of the Corporation at which the agreement or proposed agreement or other matter is to be considered he shall—

- (a) at the meeting and before the agreement, proposed agreement or other matter is considered, disclose the fact of his interest;
- (b) withdraw from the meeting;
- (c) not participate in the consideration of or vote on any question with respect to the agreement, proposed agreement or other matter;
- (d) be disregarded for the purpose of constituting a quorum of the Corporation for any such consideration.

(2) Subsection (1) does not apply to an interest which a member may have in common with the public.

(3) For the purposes of this section a person shall be taken to have an indirect pecuniary interest in an agreement or a proposed agreement or other matter if—

(a) he or a nominee of his is a member of a body corporate with which the agreement is made or proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

(b) he is a partner or an employee of a person with whom the agreement is made or proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

(4) In the case of spouses living together the interest of one spouse shall, if it is known to the other, be deemed for the purposes of subsection (3) to be also the interest of that other spouse.

(5) For the purposes of this section a person shall not be taken to have a pecuniary interest in an agreement or a proposed agreement or other matter by reason only of his membership of or employment under a public body concerned with the agreement, proposed agreement, or other matter.

(6) A general notice given in writing to the Chairman by a member to the effect that he or his spouse is a member or an employee of a specified body corporate or that he or his spouse is a partner or an employee of a specified person shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any agreement, proposed agreement or other matter made, proposed to be made or relating to that body corporate or person which may become the subject of consideration by the Corporation after the date of the notice.

(7) The Chairman shall record in a book to be kept for the purpose—

(a) particulars of every notice given to him and referred to in subsection (6); and

(b) particulars of every disclosure of interest made at a meeting of the Corporation and referred to in subsection (1), which particulars as disclosed are not already recorded in the book,

and the book shall be open at all reasonable times to inspection by any member.

(8) The Minister, subject to such conditions as he thinks fit to impose, may remove as respects any member a disability imposed by this section whenever the number of members so disabled at any time would in his opinion be such as to impede the conduct of business of the Corporation or if, in any other case, it appears to the Minister desirable that the disability should be removed.

(9) The Corporation may by its resolution exclude any member from a meeting whilst any agreement, proposed agreement or other matter in which he has an interest such as is referred to in subsection (1) is under consideration.

(10) In this section, unless the contrary intention appears, the term member includes a delegate member.

25. Administrative assistance. (1) The Co-ordinator-General shall provide such administrative assistance to the Corporation as he thinks fit.

(2) The Governor in Council may, under and subject to the provisions of the *Public Service Act* 1922–1976 appoint such officers as he thinks necessary for the effectual administration of this Act.

(3) Where an officer of the Public Service of the State is appointed under subsection (2) he may, if the appointment is not a full-time appointment, hold such office in conjunction with the office for the time being held by him in the Public Service of the State and may receive in respect of such appointment such remuneration as is recommended by the Public Service Board.

PART III—APPLICATIONS FOR ASSISTANCE

26. Applications for assistance. A person engaged or proposing to engage in the film industry may make application to the Corporation for financial or other assistance.

27. Investigation of applications. (1) The Corporation shall investigate an application made under section 26 and in doing so shall have regard to whether the provision of such assistance will contribute to the development of the film industry in the State.

(2) The Corporation may refer an application to a person who or an organization which, in the opinion of the Corporation, has special knowledge of or experience or capacity in the film industry and such reference shall be for the purpose of enabling such person or organization to report to or confer with the Corporation concerning such matters as are considered by the Corporation to be relevant to the application.

(3) The Corporation shall furnish to the Minister a report concerning its investigation in respect of an application for financial assistance and in, or accompanying, such report shall make a recommendation in respect of the application concerned.

28. Decision in respect of applications. (1) The Minister shall not consider an application for financial assistance under this Act until he receives a report and recommendation in respect thereof from the Corporation.

(2) The Minister may refer the application back to the Corporation for further investigation, report and recommendation and he shall not consider the application until he has received the further report and recommendation.

(3) The Minister shall give consideration to the report and recommendation (and such further report and recommendation, if any) concerning an application but he shall not be bound by those reports and recommendations.

(4) If the Minister is of the opinion that financial assistance should be given to the applicant he shall recommend to the Governor in Council accordingly.

(5) The Governor in Council may approve the application or he may refuse to approve it.

(6) Approval by the Governor in Council of an application shall be by Order in Council and in the same or another Order he shall specify the terms and conditions upon which the assistance may be given.

29. Assistance to accord with Order in Council. Where the Governor in Council, by Order in Council, has approved of the Corporation financially assisting an applicant under this Act, the Corporation shall provide such assistance in accordance with the specifications contained in the Order in Council and not otherwise.

30. Terms of guarantees. (1) The Governor in Council shall in the Order in Council approving financial assistance under this Act by way of a guarantee specify the amount repayment whereof may be guaranteed, the period of and such other matters and things concerning the loan, including security for the payment thereof, as he thinks fit.

(2) Without limiting the generality of the foregoing, matters specified shall include—

- (a) the terms, provisions and conditions of the loan in respect whereof the guarantee is to be given including repayment of such loan and payment of interest in respect thereof; and
- (b) the security to be given by the applicant or other person providing security to the person making the loan.

31. Guarantee voidable in certain circumstances. Guarantees are voidable at the option of the Corporation if the lender fails in any respect to comply with the terms, provisions and conditions binding upon him with respect to the loan or fails to take security as specified in the Order in Council or, without the prior consent in writing of the Corporation, releases in whole or in part any mortgage or security specified in the Order or, without the prior consent in writing of the Corporation, waives any right or remedy had by him in respect of the loan under any security therefor taken by him or otherwise howsoever.

32. Publication of Order in Council re guarantees. Where the Governor in Council approves an application for the giving of a guarantee under this Act, then, upon the publication in the Gazette of the Order or Orders in Council referred to in section 28, the amount of the loan when borrowed or part thereof, as the case may be, and the interest specified in respect thereof shall be taken for all purposes to be guaranteed by the Corporation, limited however to such amount and to such period of time and subject to such other terms, reservations and conditions as the Governor in Council specifies.

33. Recovery of moneys paid under guarantee. (1) In respect of all moneys paid by the Corporation under any guarantee under this Act, the Corporation has the following rights and powers:—

- (a) it may recover from the applicant the amount of all such moneys with interest at such rate as may be prescribed or if not prescribed as is determined by the Treasurer by action in any court of competent jurisdiction;

(b) it shall, to the extent of any payment made by it, be entitled to the benefit of any securities held by the lender as security for the loan to which the guarantee relates so that—

(i) where the Corporation has paid to the lender the whole of the moneys secured by such securities, the lender shall hand over such securities to the Corporation, which may exercise all the powers of the lender in respect of such securities;

(ii) where the Corporation has paid only part of the moneys so secured, the lender shall, as and when directed by the Corporation, realize such securities and, after satisfying his or its own claims out of the proceeds thereof, shall pay the balance (if any) to the Corporation.

(2) The powers and remedies of the Corporation under this section shall be exercisable singly or concurrently as in its discretion it thinks proper.

34. Restriction on Corporation. The Corporation shall ensure that—

(a) the total financial assistance approved in respect of an applicant;

(b) the total of all financial assistance approved in a financial year in respect of all applicants; and

(c) the total financial assistance (excluding financial assistance that is of no further force or effect) approved by the Governor in Council at any time,

shall not exceed—

(i) such amounts as may be prescribed, except in exceptional circumstances in which case the Minister may approve that the amounts be increased to provide for those circumstances; or

(ii) if amounts are not prescribed, such amounts as the Minister may determine.

PART IV—FINANCIAL PROVISIONS

35. Film Industry Development Fund. There shall be established and maintained at the Treasury a fund called the “Film Industry Development Fund” which fund shall form part of the special accounts comprising and styled the “Trust and Special Funds”.

36. Appropriation. Parliament may from time to time appropriate such sums as shall be necessary for the purposes of this Act and any such appropriation is hereby authorised.

37. Payments into Fund. All moneys appropriated by Parliament in accordance with section 36 and all moneys collected or received by the Corporation shall be paid into and form part of the Fund.

38. Payments out of Fund. All financial assistance provided by the Corporation and all costs, charges and expenses of the Corporation, including salaries of its officers and fees and allowances payable to members, shall be a charge against and paid out of the Fund.

39. Budget of Corporation. (1) As soon as practicable after the commencement of this Act the Corporation shall adopt and present to the Minister a budget showing its estimates of its receipts and disbursements in respect of the balance of the financial year in which the budget is presented and thereafter the Corporation shall before the commencement of each succeeding financial year adopt and present to the Minister a budget showing its estimates of its receipts and disbursements in respect of that succeeding financial year.

(2) A budget of the Corporation shall be of no force or effect until it is approved by the Minister.

(3) The Minister may amend a budget of the Corporation in such a way as he thinks fit and shall amend it where necessary and in any item so that it shall as nearly as possible balance for the financial year to which it relates having regard to the sums that may be appropriated by Parliament to the Corporation and to any other revenues reasonably expected by it for that financial year.

(4) When the Minister has approved of a budget of the Corporation the budget as approved, whether or not it has been amended pursuant to subsection (3), shall be binding upon the Corporation.

40. Observance of budget. (1) Subject to subsection (2), the Corporation shall confine its disbursements throughout a financial year within the items and amounts contained in its budget for that financial year as approved by the Minister.

(2) If during any financial year it appears to the Corporation that an extraordinary circumstance has arisen which requires the Corporation to make a disbursement in that financial year that was not provided for in the budget (as approved) for that financial year or that exceeds the amount estimated in respect of that disbursement in the budget (as approved) for that financial year the Corporation shall, before making the disbursement or excess disbursement—

(a) by resolution, approve that the disbursement or excess disbursement be made; and

(b) obtain approval of the Minister for an amendment to the budget.

(3) The Corporation shall ensure that the budget as amended and approved will not then be exceeded in particular or in total by the disbursement or excess disbursement referred to in subsection (2).

41. Transitional audit provisions. Until the commencement of the *Financial Administration and Audit Act 1977*, the Corporation shall cause to be established and kept such accounts as are directed by the Treasurer to be kept, which accounts shall be audited at least once in each financial year by the Auditor-General in accordance with the *Audit Act 1874-1968*.

PART V—GENERAL PROVISIONS

42. Annual report. (1) Within three months after the expiration of each financial year the Corporation shall furnish to the Minister a report on its operations throughout that year.

(2) The Minister shall present the report to Parliament.

43. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to all matters required or permitted by this Act to be prescribed and all matters that, in the opinion of the Governor in Council are necessary or convenient for the proper administration of this Act or to achieve the objects and purposes of this Act.