

Queensland



ARTS LEGISLATION AMENDMENT ACT 1997

Act No. 79 of 1997

Queensland



ARTS LEGISLATION AMENDMENT ACT 1997

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Queensland



Arts Legislation Amendment Act 1997

Act No. 79 of 1997

**An Act to amend certain Acts administered by the Deputy Premier,
Treasurer and Minister for The Arts and for other purposes**

[Assented to 5 December 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Arts Legislation Amendment Act 1997*.

Commencement

2.(1) Part 7, division 2, subdivisions 1 to 3 commence on the date of assent.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF LIBRARIES AND ARCHIVES ACT 1988

Act amended in pt 2

3. This part and schedule 1 amend the *Libraries and Archives Act 1988*.

Amendment of s 5 (Interpretation)

4.(1) Section 5(1), definitions “**appointed member**”, “**board**”, “**director**” and “**library facility**”—

omit.

(2) Section 5—

insert—

‘**“appropriately qualified”**, for a person to whom a power under this Act may be delegated or who is asked by the Minister to investigate and

report on a matter relating to the board, includes having the qualifications, experience or standing appropriate to exercise the power or comply with the request.

Example of standing—

A person's seniority level in an entity.

“board” means the Library Board of Queensland.

“chairperson” means the chairperson of the board.

“deputy chairperson” means the deputy chairperson of the board.

“library material” means a document or other material in the possession or control of the board.

“member” means a member of the board.

“operational plan”, of the board, means the board's operational plan developed under part 3A of this Act and part 2 of the standard.

“Parliamentary library” means the library maintained for the use of Members of the Legislative Assembly at Parliament House, Brisbane.

“premises”, of the board, means any land or buildings vested in or placed under the control of the board that are open to the public, and includes the State Library and any branch of the State Library.

“standard” means the *Financial Management Standard 1997*.

“State librarian” means the State librarian appointed under section 19.

“State Library” means the public library formerly known as the Public Library of Queensland.

“strategic plan”, of the board, means the board's strategic plan developed under part 3A of this Act and part 2 of the standard.’.

Replacement of s 6 (Crown bound)

5. Section 6—

omit, insert—

‘Act binds all persons

‘6. This Act binds all persons, including the State.’.

Omission of pt 2 (The State Library)**6.** Part 2—

omit.

Replacement of ss 8–18**7.** Sections 8 to 18—

omit, insert—

‘Board

‘**8.** The entity called the Library Board of Queensland continues in existence.

‘Legal status of board**‘9.** The board—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

‘Board’s relationship with State

‘**10.** The board represents the State.

‘Composition of board

‘**11.(1)** The board is to consist of the number of members appointed by the Governor in Council.

‘**(2)** In appointing a member, regard must be had to the person’s ability to contribute to the board’s performance and the implementation of its strategic and operational plans.

‘**(3)** A member must be appointed under this Act and not the *Public Service Act 1996*.

‘Role of members

‘12. The role of the members includes the following—

- (a) being responsible for the board’s management;
- (b) ensuring, as far as possible, the board achieves, and acts in accordance with, its strategic and operational plans;
- (c) accounting to the Minister for the board’s performance;
- (d) ensuring the board otherwise performs its functions in a proper, effective and efficient way.

‘Eligibility for appointment

‘13. A person is not eligible for appointment as a member if the person is not able to manage a corporation because of the Corporations Law, section 229.¹

‘Chairperson and deputy chairperson of board

‘14.(1) The Governor in Council must appoint a member as chairperson of the board.

‘(2) The appointment may be made by the instrument appointing the person concerned as a member of the board.

‘(3) The members must elect one of them as deputy chairperson of the board.

‘(4) The members must act under subsection (3) whenever there is a vacancy in the office of deputy chairperson, including a vacancy occurring because the office has not been filled.

‘(5) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson by signed notice given to the Minister.

‘(6) The chairperson or deputy chairperson may act under subsection (5) and remain a member.

¹ Corporations Law, section 229 (Certain persons not to manage corporations)

‘Duration of appointment

‘**15.(1)** A member is appointed for the term (not more than 5 years) stated in the member’s instrument of appointment.

‘**(2)** The office of a member becomes vacant if—

- (a) the member resigns by signed notice given to the Minister; or
- (b) the person is not eligible to be appointed as a member; or
- (c) the member’s appointment is ended under subsection (3).

‘**(3)** The Governor in Council may, at any time, end the appointment of all or any members for any reason or none.

‘Conditions of appointment

‘**16.(1)** A member holds office on the conditions not provided for by this Act that are decided by the Governor in Council.

‘**(2)** Except as decided by the Governor in Council, a member is not entitled to receive any payment, interest in property or other valuable consideration or benefit—

- (a) by way or remuneration as a member; or
- (b) in connection with resignation from office, or other termination of office, as a member, chairperson or deputy chairperson.’.

Amendment of s 19 (Director and State librarian and other officers)

8.(1) Section 19(1), after ‘Council’—

insert—

‘on the board’s recommendation’.

(2) Section 19(3)—

omit, insert—

‘**(3)** The State librarian holds office on the conditions not provided for by this Act that are decided by the board.’.

Insertion of new ss 19AA–19AD

9. After section 19—

insert—

‘Duties of State librarian

‘19AA. The State librarian is, under the members, to manage the board.

‘State librarian to attend board meetings

‘19AB.(1) This section applies if the State librarian is not a member.

‘(2) The State librarian must attend all meetings of the board unless excused or precluded by the board.

‘Things done by State librarian

‘19AC. Anything done in the name of, or for, the board by the State librarian is taken to have been done by the board.

‘Delegation by State librarian

‘19AD.(1) The State librarian may delegate the librarian’s powers (including a power delegated to the librarian by the board) to an appropriately qualified employee of the board, or an appropriately qualified officer mentioned in section 19(4).

‘(2) Subsection (1) has effect subject to any directions by the board.’.

Amendment of s 19A (Employees)

10. Section 19A(1)—

omit, insert—

‘19A.(1) The board may employ the persons it considers necessary to perform its functions.’.

Insertion of new s 19B

11. After section 19A—

insert—

‘Superannuation schemes

‘19B. The board may—

- (a) establish and maintain, or amend, superannuation schemes; or
- (b) join in establishing and maintaining, or amending, superannuation schemes; or
- (c) take part in superannuation schemes.’.

Amendment of s 21 (Functions of board)

12.(1) Section 21(1)(g), after ‘Queensland’—

insert—

‘or produced by Queensland authors’.

(1A) Section 21(1)(j) and (k)—

omit, insert—

- ‘(j) to perform the functions given to the board under another Act;
- (k) to perform functions that are incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions mentioned in paragraphs (a) to (j);
- (l) to perform functions of the type to which paragraph (k) applies and which are given to the board in writing by the Minister.’.

(2) Section 21—

insert—

‘(2) Before giving a function for subsection (1)(l), the Minister must consult with the board about the function.’.

Replacement of ss 22–28

13. Sections 22 to 28—

omit, insert—

Division 2A—Legal capacity and powers

‘Objects of division

‘22. The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to the board; and
- (b) ensuring the board gives effect to any restrictions on its functions or powers, but without affecting the validity of its dealings with outsiders.

‘General powers

‘23.(1) For performing its functions, the board has all the powers of an individual and may, for example—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) engage consultants; and
- (d) appoint agents and attorneys; and
- (e) charge, and fix terms, for goods, services, facilities and information supplied by it; and
- (f) do anything else necessary or desirable to be done in performing its functions.

‘(2) Without limiting subsection (1), the board has the powers given to it under this or another Act.

‘(3) The board may exercise its powers inside and outside Queensland, including outside Australia.

‘(4) In this section—

“power” includes legal capacity.

‘Directions by Minister

‘24. The board is subject to written directions of the Minister in exercising its powers.

‘Restrictions on powers of board

‘25.(1) Section 23 has effect in relation to the board subject to any restrictions expressly imposed under this or another Act.

‘(2) Section 23 also has effect in relation to the board subject to any restrictions expressly imposed by—

- (a) any relevant strategic or operational plan of the board; and
- (b) any relevant directions given to the board under section 24 by the Minister.

‘(3) The board contravenes this section if it—

- (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than in pursuance of its functions.

‘(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

‘(5) An officer of the board who is involved in the contravention contravenes this subsection.

‘(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

‘(7) The board or officer of the board is not guilty of an offence merely because of the relevant contravention.

‘(8) In this section—

“**officer**”, of the board, means—

- (a) a member; or
- (b) the State librarian; or
- (c) an officer mentioned in section 19(4); or

(d) an employee of the board.

“**restriction**” includes prohibition.

‘Persons having dealings with board etc.

‘**26.(1)** A person having dealings with the board is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board that the matters that the person is entitled to assume were not correct must be disregarded.

‘**(2)** A person having dealings with a person who has acquired, or purports to have acquired, title to property from the board (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

‘**(3)** The assumptions that a person is, because of subsection (1) or (2) entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by the board to be an officer or agent of the board has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the board who has authority to issue a document on behalf of the board has authority to warrant that the document is genuine and that an officer or agent of the board who has authority to issue a certified copy of a document on behalf of the board has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the board if—
 - (i) it bears what appears to be an imprint of the board’s seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer or agent of the board; and

- (e) that the officers and agents of the board have properly performed their duties to the board.

‘(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person’s connection or relationship with the board, the person ought to know that the assumption would be incorrect.

‘(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the board—subsection (1) does not apply to any assertion by the board in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the board of title to property—subsection (2) does not apply to any assertion by the board or another person in relation to the assumption.

‘(6) In this section—

“**officer**”, of the board, means—

- (a) a member; or
- (b) the State librarian; or
- (c) an officer mentioned in section 19(4); or
- (d) an employee of the board.

‘**Branches**

‘**27.(1)** The board may establish branches of the State Library.

‘(2) However, the board may not contract with someone else to establish a branch without the approval of the Governor in Council.

‘Grants or subsidies to local government

‘28. The board may not make a grant or give a subsidy to a local government without the approval of the Minister.

‘Disposal of abandoned property

‘28A.(1) This section applies if any property—

- (a) is found on any building or other place consisting of the State Library or a branch of the State Library; and
- (b) there are reasonable grounds for suspecting the property has been abandoned by the person who last used it; and
- (c) the property is unclaimed after 4 months.

‘(2) The board may sell the property by public auction.

‘(3) Despite subsection (2), if the board considers on reasonable grounds that, because of the property’s value, it is not viable to sell it, the board may dispose of the property in another way.

‘(4) Despite subsection (2), if the board considers on reasonable grounds that the property is in a dangerous condition or unfit for use for the purpose for which it was intended to be used, the board may cause it to be destroyed.

‘Board must give notice of public auction of property

‘28B.(1) Before the board sells any property under section 28A it must first publish a notice in a daily newspaper circulating generally in the State.

‘(2) The notice must—

- (a) identify the property; and
- (b) state the property is to be sold by auction; and
- (c) state how the person entitled to the property may recover it before the auction; and
- (d) state the time and place of the auction.

‘Effect of sale or other disposal of property

‘**28C.(1)** This section applies to the sale or other disposal of property under section 28A.

‘**(2)** The sale or other disposal is valid against all persons.

‘**(3)** Compensation is not recoverable against the board for the sale or other disposal.

‘**(4)** Stamp duty is not payable for the sale or other disposal.’.

Amendment of s 29 (Conduct of business)

14. Section 29(2)—

omit.

Replacement of ss 31 and 32

15. Sections 31 and 32—

omit, insert—

‘Presiding at meetings

‘**31.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

‘**(2)** If the chairperson is not present at a meeting, the deputy chairperson is to preside.

‘**(3)** If both the chairperson and deputy chairperson are not present at a meeting, the member chosen by the members present at the meeting is to preside.

‘Meetings

‘**32.(1)** The board may hold its meetings where and when it decides.

‘**(2)** The board may hold meetings, or allow members to take part in meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

‘Resolutions without meeting

‘32A.(1) If at least a majority of members sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the members do not sign it on the same day, the day on which the last of the members constituting the majority signs the document.

‘(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each member must be immediately advised of the matter and given a copy of the terms of the resolution.

‘(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to constitute a single document.

‘Minutes

‘32B. The board must keep minutes of its proceedings.’.

Replacement of ss 34–37

16. Sections 34 to 37—

omit, insert—

‘Disclosure of interests by members

‘34.(1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member’s knowledge.

Maximum penalty—100 penalty units.

‘(2) The disclosure must be recorded in the board’s minutes.

‘Voting by interested member

‘35.(1) A member who has a material personal interest in a matter that is being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution under subsection (2) (a **“related resolution”**) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

‘(3) If, because of this section a member is not present at a meeting of the board for considering or deciding a matter, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the matter at the meeting.

‘Delegation by board

‘36. The board may, by resolution, delegate its powers to—

- (a) a member; or
- (b) a committee of members; or
- (c) the State librarian; or
- (d) an appropriately qualified officer mentioned in section 19(4) or an appropriately qualified employee of the board.’.

Omission of pt 3, div 4

17. Part 3, division 4—

omit.

Insertion of new pts 3A–3C

18. After part 3—

insert—

‘PART 3A—PLANNING***‘Division 1—Preliminary*****‘How pt 3A applies if offices of Minister and Treasurer are held by the 1 person**

‘38.(1) This section applies if, under a provision of this part, a thing is required to be done by or in relation to the Minister and the Treasurer and the Minister is the Treasurer.

‘(2) The provision is satisfied if the thing is done by or in relation to the Minister.

‘Part additional to standard

‘39.(1) This part is additional to and does not derogate from the standard.

‘(2) However, if there is an inconsistency between this part and the standard, this part prevails to the extent of the inconsistency.

‘(3) Also, if something is required to be done under this part and the same thing, or something to the same effect, is required to be done under the standard, compliance with this part is sufficient compliance with the standard.

Division 2—Strategic and operational plans for board**‘Draft strategic and operational plans**

‘**40.(1)** The board must prepare and submit to the Minister for the Minister’s agreement, draft strategic and operational plans for the board not later than 4 months before the start of each financial year.

‘**(2)** The board must give copies of the draft plans to the Treasurer at the same time as it gives the plans to the Minister.

‘**(3)** The draft plans must—

- (a) be in the format approved by the Minister; and
- (b) provide for the things that a strategic plan and an operational plan for the board must provide for under the standard or this part; and
- (c) be accompanied by—
 - (i) a statement of resource implications, and major policy changes, resulting from the proposed plan; and
 - (ii) any budget documents the board has prepared for the State’s funding of the board.

‘**(4)** The board and the Minister must try to reach agreement on the draft plans as soon as possible and in any event not later than 1 month before the start of the financial year.

‘Special procedures for draft strategic and operational plans

‘**41.(1)** The Minister may return the draft strategic and operational plans to the board and ask it—

- (a) to consider, or further consider, anything and deal with the thing in the draft plans; and
- (b) to revise the draft plans in the light of its consideration or further consideration.

‘**(2)** The board must comply with the request as a matter of urgency but subsection (1) does not require the board to amend the draft plans.

‘**(3)** If the draft plans have not been agreed to by the Minister by 1 month

before the start of the financial year, the Minister may by written notice, direct the board—

- (a) to take specified steps in relation to the draft plans or either of them; or
- (b) to make specified modifications of the draft plans or either of them.

‘(4) The board must immediately comply with the direction and include a copy of the direction in the plans or plan concerned.

‘(5) The Minister may act under subsection (1) or (3) for a thing having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the implications.

‘Strategic and operational plans on agreement

‘42.(1) When the draft strategic and operational plans have been agreed to in writing by the Minister, they become the board’s strategic and operational plans for the relevant financial year.

‘(2) However, the Minister may not agree to the plans for subsection (1) until Parliament appropriates amounts for the department for the relevant financial year.

‘Strategic and operational plans pending agreement

‘43.(1) This section applies if the Minister and the board have not agreed to draft strategic and operational plans before the start of the relevant financial year.

‘(2) The draft plans submitted, or last submitted, by the board to the Minister before the start of the financial year, with any modifications made by the board, whether before or after that time, at the direction of the Minister, are taken to be the board’s strategic and operational plans.

‘(3) Subsection (2) applies until draft strategic and operational plans become the board’s strategic and operational plans under section 42.

‘Modifications of strategic and operational plans

‘**44.(1)** The board may modify its strategic or operational plan only with the written agreement of the Minister.

‘**(2)** The Minister may, by written notice, direct the board to modify its strategic or operational plan.

‘**(3)** The Minister may act under subsection (1) or (2) for a modification having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the modification.

‘State’s agreed triennial funding

‘**45.** The board’s strategic plan must include the State’s agreed funding proposals for the board for the period covered by the plan or, if the period is more than 3 years, the first 3 years.

‘Elements of operational plans

‘**46.** The board’s operational plan must include the following—

- (a) targets for, and ways of measuring, outputs the board intends to supply;
- (b) identification of the outputs that are not in the board’s commercial interests to supply;
- (c) identification of the outputs intended to be funded by amounts appropriated by Parliament for the department, or by other grants to the board;
- (d) identification of any outputs intended to be funded from the board’s commercial and fundraising activities;
- (e) an outline of the nature and scope of activities, including commercial and fundraising activities, the board proposes to undertake;
- (f) an outline of the major investments and borrowings the board intends to make;
- (g) an outline of the board’s risk management policies and

procedures;

- (h) an outline of the main undertakings proposed by the board.

‘Information systems and physical assets strategic plans

‘47. The board’s information systems and physical assets strategic plans under the standard must be included in the board’s strategic plan.

‘PART 3B—ACCOUNTABILITY MATTERS

‘Board to keep Minister informed

‘47A.(1) The board must—

- (a) keep the Minister reasonably informed of the board’s operations including its financial and operational performance and the achievement of its goals; and
- (b) give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board’s opinion may prevent, or significantly affect, achievement of its goals under its strategic plan or significantly affect its performance in delivering the outputs under its operational plan—immediately inform the Minister of the matters and its opinion about them.

‘(2) Subsection (1) does not limit the matters of which the board is required to keep the Minister informed, or limit the reports or information that the board is required, or may be required, to give to the Minister, by another Act.

‘Monitoring and assessment of board

‘47B.(1) The Minister may ask an appropriately qualified officer of the department or another appropriately qualified person to investigate, and report to the Minister on, any matter relating to the board.

‘(2) The person may give written directions to the board for the investigation.

‘(3) Without limiting subsection (2), the person may direct the board—

- (a) to give to the person any information about the board that the person considers necessary or desirable in connection with the investigation; and
- (b) to permit other persons authorised by the person to have access to specified records and other documents about the board that the person considers necessary or desirable in connection with the investigation; and
- (c) to take steps the person considers necessary or desirable for the investigation.

‘(4) The board must ensure that any direction given to it under this section is complied with.

‘(5) Before reporting on the investigation to the Minister, the person must consult with the board about the report.

‘PART 3C—REPORTING

‘Annual report

‘47C. The board’s annual report under the *Financial Administration and Audit Act 1977* must include—

- (a) a summary of the operational plan for the relevant financial year; and
- (b) a summary of any modifications of the operational plan during the relevant financial year; and
- (c) particulars of any directions given to the board by the Minister that relate to the relevant financial year; and
- (d) particulars of the impact on the financial position of the board of any modifications of the operational plan, and any directions

given to the board by the Minister, that relate to the relevant financial year.’.

Replacement of ss 62 and 63

19. Sections 62 and 63—

omit, insert—

‘Delivery of published material to State and Parliamentary libraries

‘**62.** A person who publishes in Queensland to the general public material to which this part applies must, at the person’s own expense, give a copy of the material to the board, and to the librarian of the Parliamentary library, within 1 month after publication.

Maximum penalty—20 penalty units.

‘Receipt to be given

‘**63.(1)** The State librarian must give a receipt for material given to the board under section 62, and the librarian of the Parliamentary library must give a receipt for material given to the librarian under the section.

‘**(2)** For a periodical publication, it is enough if a receipt is given for copies of the publication once a year.’.

Replacement of s 66 (Power of exemption)

20. Section 66—

omit, insert—

‘Exemptions

‘**66.(1)** The State librarian may exempt a person from section 62 in relation to the board for all or stated material.

‘**(2)** The librarian of the Parliamentary library may exempt a person from section 62 in relation to the Parliamentary library for all or stated material.’.

Replacement of s 68 (Unauthorised removal or possession of property)

21. Section 68—

omit, insert—

‘Delegation by Minister

‘68.(1) The Minister may delegate the Minister’s powers under this Act to an appropriately qualified officer of the department.

‘(2) However, the Minister may not delegate any of the following powers—

- (a) the power to give the board a function for section 21(1)(l);²
- (b) the power to direct the board under sections 24, 41(3) and 44(2);³
- (c) the power to agree in writing to, and agree in writing to modifications of, the board’s strategic and operational plans;
- (d) the power to ask a person to investigate and report under section 47B(1).⁴

‘Protection from liability of members

‘68A.(1) A member is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

‘(2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the board.

‘(3) This section is subject to section 68B.

‘Illegal borrowing

‘68B.(1) Subsection (2) applies if the board borrows an amount that it is not authorised to borrow under an Act.

‘(2) The members who consented to the borrowing are jointly and

² Section 21 (Functions of board)

³ Sections 24 (Directions by Minister), 41 (Special procedures for draft strategic and operational plans) and 44 (Modifications of strategic and operational plans)

⁴ Section 47B (Monitoring and assessment of board)

severally liable to repay the amount, and any interest on it, to the person from whom it was borrowed and the person may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

‘(3) Subsection (4) applies if an amount is appropriated from the board’s moneys to repay an amount mentioned in subsection (1) or interest on the amount.

‘(4) The members who consented to the appropriation are jointly and severally liable to refund the amount, together with interest on the amount at a rate decided by the Treasurer, and the Treasurer may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

‘(5) If the Treasurer brings an action under subsection (4)—

- (a) the Treasurer is entitled to costs as between solicitor and client; and
- (b) any amount recovered must be paid to the board.

‘(6) Subsection (2) does not apply to a member if, at the time the member consented to the borrowing, the member believed on grounds that were reasonable in all the circumstances that the board was authorised under an Act to borrow the amount.

‘(7) Subsection (4) does not apply to a member if—

- (a) subsection (2) does not apply to the member because of subsection (6); or
- (b) the member did not consent to the borrowing.

‘Application of certain Acts

‘68C.(1) The board is a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the board’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

‘Application of rule against perpetuities

‘68D. For the application of the rule against perpetuities to gifts to the board, the board’s purposes are taken to be charitable.

‘Exemption from stamp duty

‘68E. Stamp duty is not payable for the transfer of any property to the board.

‘State Library etc. taken to be public place

‘68F.(1) This section applies for any Act conferring or imposing on a police officer powers or functions in respect of a public place or providing for offences committed in a public place.

‘(2) A building or another place consisting of the State Library or a branch of the State Library is taken to be a public place.

‘(3) Subsection (2) must not be construed to prevent or limit the imposition by the board of conditions of entry for the building or other place.

‘Inspection of material or receptacle brought onto board’s premises

‘68G.(1) The purpose of this section is to stop the unauthorised removal of library material from the board’s premises.

‘(2) This section applies if—

- (a) a person brings onto the board’s premises any material in the nature of library material or a receptacle that may contain library material; and
- (b) an officer or employee of the board asks the person to allow the officer or employee to inspect the material or receptacle.

‘(3) The person must allow the officer or employee to inspect the material or receptacle unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—5 penalty units.

‘(4) An officer or employee may exercise a power under subsection (2)(b) only if the officer or employee—

- (a) first produces his or her approved identity card for inspection by the person; or
- (b) has his or her approved identity card displayed so that it is clearly visible to the person.

‘(5) In this section—

“approved identity card”, for an officer or employee of the board, means an identity card approved by the board that—

- (a) contains a recent photograph of the officer or employee; and
- (b) identifies the person as an officer or employee of the board.

“inspect” includes open.

‘Board’s seal

‘68H.(1) The board’s seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

‘(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more members; or
- (b) at least 1 member and the State librarian; or
- (c) a member or the State librarian, and 1 or more other persons authorised by the board.

‘Authentication of documents

‘68I. A document made by the board (other than a document that is required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson; or
- (b) the State librarian; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the board; or
 - (ii) direction of the State librarian.’.

Amendment of s 69 (Reward for information)

22.(1) Section 69(2), ‘convicted’—

omit, insert—

‘found guilty’.

(2) Section 69—

insert—

‘**(4)** Subsection (2) applies whether or not a conviction is recorded.’.

Replacement of s 70 (Proceedings)

23. Section 70—

omit, insert—

‘Proceedings for offences

‘**70.** A proceeding for an offence under this Act may be instituted summarily under the *Justices Act 1886*.’.

Replacement of s 73

24. Section 73—

omit, insert—

‘Regulation-making power

‘**73.** The Governor in Council may make regulations under this Act.’.

Insertion of new pt 8

25. After section 73—

insert—

‘PART 8—SAVING AND TRANSITIONAL**‘Certain members continue in office**

‘**74.(1)** A person who, immediately before the commencement of this

section, was a member under section 9(a) or (c) of this Act as in force at that time (the “**pre-amended Act**”) continues in office, subject to this Act, as a member.

‘(2) If the person who was a member under section 9(a) of the pre-amended Act was the chief executive, the person continues in office until 5 years after the commencement of this section, or the person stops holding the office of chief executive, whichever happens first.

‘(3) If the person who was a member under section 9(a) of the pre-amended Act was the chief executive’s nominee—

- (a) the chief executive may withdraw the person’s nomination at any time; and
- (b) the person continues in office until 5 years after the commencement of this section, or the person’s nomination is withdrawn, whichever happens first.

‘(4) A member appointed under section 9(c) of the pre-amended Act continues in office in terms of the member’s appointment.

‘(5) On the commencement of this section, a person who was a member under section 9(b) of the pre-amended Act does not continue in office as a member.

‘(6) The member who immediately before the commencement of this section was the chairperson or deputy chairperson under the pre-amended Act continues in that office in terms of the member’s appointment.

‘**State librarian continues in office**

‘75. The person who, immediately before the commencement of this section, was the Director and State librarian under this Act continues in office as the State librarian in terms of the person’s appointment as Director and State librarian.

‘**Numbering and renumbering**

‘76. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

‘Expiry of part

‘77. This part expires 5 years after the commencement of this section.’.

**PART 3—AMENDMENT OF QUEENSLAND ART
GALLERY ACT 1987****Act amended in pt 3**

26. This part and schedule 2 amend the *Queensland Art Gallery Act 1987*.

Replacement of s 5 (Definitions)

27. Section 5—

omit, insert—

‘Definitions

‘2. In this Act—

“**appropriately qualified**”, for a person to whom a power under this Act may be delegated or who is asked by the Minister to investigate and report on a matter relating to the board, includes having the qualifications, experience or standing appropriate to exercise the power or comply with the request.

Example of standing—

A person’s seniority in an entity.

“**art gallery**” means the Queensland Art Gallery.

“**board**” means the Queensland Art Gallery Board of Trustees.

“**chairperson**” means the chairperson of the board.

“**deputy chairperson**” means the deputy chairperson of the board.

“**director**” means the director appointed under section 18.

“**member**” means a member of the board.

“**operational plan**”, of the board, means the board’s operational plan developed under part 3 of this Act and part 2 of the standard.

“**standard**” means the *Financial Management Standard 1997*.

“**strategic plan**”, of the board, means the board’s strategic plan developed under part 3 of this Act and part 2 of the standard.’.

Replacement of ss 6–17

28. Sections 6 to 17—

omit, insert—

‘Board of trustees

‘6. The entity called the Queensland Art Gallery Board of Trustees continues in existence.

‘Legal status of board

‘7. The board—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

‘Board’s relationship with State

‘8. The board represents the State.

‘Composition of board

‘9.(1) The board is to consist of the number of members appointed by the Governor in Council.

‘(2) In appointing a member, regard must be had to the person’s ability to contribute to the board’s performance and the implementation of its strategic and operational plans.

‘(3) A member must be appointed under this Act and not the *Public Service Act 1996*.

‘Role of members

‘10. The role of the members includes the following—

- (a) being responsible for the board’s management;
- (b) ensuring, as far as possible, the board achieves, and acts in accordance with, its strategic and operational plans;
- (c) accounting to the Minister for the board’s performance;
- (d) ensuring the board otherwise performs its functions in a proper, effective and efficient way.

‘Eligibility for appointment

‘11. A person is not eligible for appointment as a member if the person is not able to manage a corporation because of the Corporations Law, section 229.⁵

‘Chairperson and deputy chairperson of board

‘12.(1) The Governor in Council must appoint a member as chairperson of the board.

‘(2) The appointment may be made by the instrument appointing the person concerned as a member of the board.

‘(3) The members must elect one of them as deputy chairperson of the board.

‘(4) The members must act under subsection (3) whenever there is a vacancy in the office of deputy chairperson, including a vacancy occurring because the office has not been filled.

‘(5) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson by signed notice given to the Minister.

⁵ Corporations Law, section 229 (Certain persons not to manage corporations)

‘(6) The chairperson or deputy chairperson may act under subsection (5) and remain a member.

‘Duration of appointment

‘13.(1) A member is appointed for the term (not more than 5 years) stated in the member’s instrument of appointment.

‘(2) The office of a member becomes vacant if—

- (a) the member resigns by signed notice given to the Minister; or
- (b) the person is not eligible to be appointed as a member; or
- (c) the member’s appointment is ended under subsection (3).

‘(3) The Governor in Council may, at any time, end the appointment of all or any members for any reason or none.

‘Conditions of appointment

‘14.(1) A member holds office on the conditions not provided for by this Act that are decided by the Governor in Council.

‘(2) Except as decided by the Governor in Council, a member is not entitled to receive any payment, interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a member; or
- (b) in connection with resignation from office, or other termination of office, as a member, chairperson or deputy chairperson.’.

Amendment of s 18 (Director and other officers)

29.(1) Section 18(1), after ‘Council’—

insert—

‘on the board’s recommendation’.

(2) Section 18(2)—

omit, insert—

‘(2) The director holds office on the conditions not provided for by this Act that are decided by the board.’.

Replacement of section 19 (Director to be secretary and chief executive officer)

30. Section 19—

omit, insert—

‘Duties of director

‘19. The director is, under the members, to manage the board.

‘Director to attend board meetings

‘19A.(1) This section applies if the director is not a member.

‘(2) The director must attend all meetings of the board unless excused or precluded by the board.

‘Things done by director

‘19B. Anything done in the name of, or for, the board by the director is taken to have been done by the board.

‘Delegation by director

‘19C.(1) The director may delegate the director’s powers (including a power delegated to the director by the board) to an appropriately qualified employee of the board, or an appropriately qualified officer mentioned in section 18(3).

‘(2) Subsection (1) has effect subject to any directions by the board.

‘Superannuation schemes

‘19D. The board may—

- (a) establish and maintain, or amend, superannuation schemes; or
- (b) join in establishing and maintaining, or amending, superannuation

schemes; or

- (c) take part in superannuation schemes.’.

Amendment of s 20 (Functions)

31.(1) Section 20(f)—

omit, insert—

- ‘(f) to encourage artistic achievement by artists resident in Queensland; and
- (g) to perform the functions given to the board under another Act; and
- (h) to perform functions that are incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions mentioned in paragraphs (a) to (g); and
- (i) to perform functions of the type to which paragraph (h) applies and which are given to the board in writing by the Minister.’.

(2) Section 20—

insert—

‘(2) Before giving a function for subsection (1)(i), the Minister must consult with the board about the function.’.

Replacement of ss 21–26

32. Sections 21 to 26—

omit, insert—

‘Division 2A—Legal capacity and powers

‘Objects of division

‘**21.** The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to the board; and
- (b) ensuring the board gives effect to any restrictions on its functions

or powers, but without affecting the validity of its dealings with outsiders.

‘General powers

‘21A.(1) For performing its functions, the board has all the powers of an individual and may for example—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) engage consultants; and
- (d) appoint agents and attorneys; and
- (e) charge, and fix terms, for goods, services, facilities and information supplied by it; and
- (f) do anything else necessary or desirable to be done in performing its functions.

‘(2) Without limiting subsection (1), the board has the powers given to it under this or another Act.

‘(3) The board may exercise its powers inside and outside Queensland, including outside Australia.

‘(4) In this section—

“power” includes legal capacity.

‘Directions by Minister

‘21B. The board is subject to written directions of the Minister in exercising its powers.

‘Restrictions on powers of board

‘21C.(1) Section 21A has effect in relation to the board subject to any restrictions expressly imposed under this or another Act.

‘(2) Section 21A also has effect in relation to the board subject to any restrictions expressly imposed by—

- (a) any relevant strategic or operational plan of the board; or
- (b) any relevant directions given to the board under section 21B by the Minister.

‘(3) The board contravenes this section if it—

- (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than in pursuance of its functions.

‘(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

‘(5) An officer of the board who is involved in the contravention contravenes this subsection.

‘(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

‘(7) The board or officer of the board is not guilty of an offence merely because of the relevant contravention.

‘(8) In this section—

“**officer**”, of the board, means—

- (a) a member; or
- (b) the director; or
- (c) an officer mentioned in section 18(3); or
- (d) an employee of the board.

“**restriction**” includes prohibition.

‘Persons having dealings with board etc.

‘**21D.(1)** A person having dealings with the board is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board that the matters that the person is entitled to assume were not correct must be disregarded.

‘(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from the board (whether directly

or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

‘(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by the board to be an officer or agent of the board has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the board who has authority to issue a document on behalf of the board has authority to warrant that the document is genuine and that an officer or agent of the board who has authority to issue a certified copy of a document on behalf of the board has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the board if—
 - (i) it bears what appears to be an imprint of the board’s seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer or agent of the board; and
- (e) that the officers and agents of the board have properly performed their duties to the board.

‘(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person’s connection or relationship with the board, the person ought to know that the assumption would be incorrect.

‘(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the board—subsection (1) does not apply to any assertion by the board in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the board of title to property—subsection (2) does not apply to any assertion by the board or another person in relation to the assumption.

‘(6) In this section—

“**officer**”, of the board, means—

- (a) a member; or
- (b) the director; or
- (c) an officer mentioned in section 18(3); or
- (d) an employee of the board.

‘**Branches**

‘**22.(1)** The board may establish branches of the art gallery.

‘(2) However, the board may not contract with someone else to establish a branch without the approval of the Governor in Council.

‘**Disposal of works of art accepted by the board**

‘**23.(1)** This section applies if—

- (a) a work of art is accepted by the board for exhibition or for another purpose; and
- (b) the work is not collected by the person who gave it within 2 years after acceptance or, if the board has agreed to hold the work for a certain period, 2 years after the period ends.

‘(2) Subject to any arrangement about the work between the board and the person, the board may—

- (a) sell the work by public auction; or
- (b) exchange the work for another work of art; or
- (c) if the board considers on reasonable grounds that, because of the

work's value, it is not viable to sell or exchange it—dispose of the work in another way.

‘(3) However, if the board intends to sell, exchange or otherwise dispose of the work, it must give the person at least a month's written notice of its intention.

‘(4) If the person's address is not known to the board, the notice may be given to the person by publishing it in a daily newspaper circulating generally in the State.

‘(5) A notice under subsection (4) may form part of a notice under section 26.

‘(6) If the work is sold, after deducting the costs of and incidental to the sale, the proceeds must be held by the board for the person for at least 1 year after the sale.

‘(7) If the proceeds are not claimed by the person within 1 year after the sale, the proceeds may be used by the board for its functions.

‘Use of proceeds from sale of other works of art

‘24. The proceeds of the sale by the board of any work of art other than under section 23 must, after deduction of the costs of and incidental to the sale, be used by the board for its functions.

‘Disposal of certain abandoned property

‘25.(1) This section applies if any property, other than a work of art to which section 23 applies—

- (a) is found on any building or other place consisting of the art gallery or a branch of the art gallery; and
- (b) there are reasonable grounds for suspecting the property has been abandoned by the person who last used it; and
- (c) the property is unclaimed after 4 months.

‘(2) The board may sell the property by public auction.

‘(3) Despite subsection (2), if the board considers on reasonable grounds that, because of the property's value, it is not viable to sell it, the board may

dispose of the property in another way.

‘(4) Despite subsection (2), if the board considers on reasonable grounds that the property is in a dangerous condition or unfit for use for the purpose for which it was intended to be used, the board may cause it to be destroyed.

‘Board must give notice of public auction

‘**26.(1)** Before the board sells any property under section 23 or 25 it must first publish a notice in a daily newspaper circulating generally in the State.

‘(2) The notice must—

- (a) identify the property; and
- (b) state the property is to be sold by auction; and
- (c) state how the person entitled to the property may recover it before the auction; and
- (d) state the time and place of the auction.

‘Effect of sale or other disposal of certain works of art or other property

‘**26A.(1)** This section applies to the sale or other disposal of any property under section 23 or 25.

‘(2) The sale or other disposal is valid against all persons.

‘(3) Compensation is not recoverable against the board for the sale or other disposal.

‘(4) Stamp duty is not payable for the sale or other disposal.’.

Amendment of s 27 (Conduct of business)

33. Section 27(2)—

omit.

Insertion of new s 27A (Presiding at meetings)

34. After section 27—

insert—

‘Presiding at meetings

‘**27A.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

‘**(2)** If the chairperson is not present at a meeting, the deputy chairperson is to preside.

‘**(3)** If both the chairperson and deputy chairperson are not present at a meeting, the member chosen by the members present at the meeting is to preside.’.

Replacement of ss 29 and 30

35. Sections 29 and 30—

omit, insert—

‘Meetings

‘**29.(1)** The board may hold its meetings where and when it decides.

‘**(2)** The board may hold meetings, or allow members to take part in meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘**(3)** A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

‘Resolutions without meetings

‘**29A.(1)** If at least a majority of members sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document is signed or, if the members do not sign it on the same day, the day on which the last of the members constituting the majority signs the document.

‘**(2)** If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each member must be immediately advised of the matter and given a copy of the terms of the resolution.

‘(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to constitute a single document.

‘Minutes

‘30. The board must keep minutes of its proceedings.’.

Replacement of ss 32–34

36. Sections 32 to 34—

omit, insert—

‘Disclosure of interests by members

‘32.(1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member’s knowledge.

Maximum penalty—100 penalty units.

‘(2) The disclosure must be recorded in the board’s minutes.

‘Voting by interested member

‘33.(1) A member who has a material personal interest in a matter that is being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution under subsection (2) (a “**related resolution**”) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to the matter if the board has at any

time passed a resolution that—

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

‘(3) If, because of this section, a member is not present at a meeting of the board for considering or deciding a matter, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the matter at the meeting.

‘Delegation by board

‘34. The board may, by resolution, delegate its powers to —

- (a) a member; or
- (b) a committee of members; or
- (c) the director; or
- (d) an appropriately qualified officer mentioned in section 18(3) or appropriately qualified employee of the board.’.

Replacement of pt 3 (Financial provisions)

37. Part 3—

omit, insert—

‘PART 3—PLANNING

‘Division 1—Preliminary

‘How pt 3 applies if offices of Minister and Treasurer are held by the 1 person

‘36.(1) This section applies if, under a provision of this part, a thing is required to be done by or in relation to the Minister and the Treasurer and the Minister is the Treasurer.

‘(2) The provision is satisfied if the thing is done by or in relation to the Minister.

‘Part additional to standard

‘37.(1) This part is additional to and does not derogate from the standard.

‘(2) However, if there is an inconsistency between this part and the standard, this part prevails to the extent of the inconsistency.

‘(3) Also, if something is required to be done under this part and the same thing, or something to the same effect, is required to be done under the standard, compliance with this part is sufficient compliance with the standard.

‘Division 2—Strategic and operational plans for board

‘Draft strategic and operational plans

‘38.(1) The board must prepare and submit to the Minister for the Minister’s agreement, draft strategic and operational plans for the board not later than 4 months before the start of each financial year.

‘(2) The board must give copies of the draft plans to the Treasurer at the same time as it gives the plans to the Minister.

‘(3) The draft plans must—

- (a) be in the form approved by the Minister; and
- (b) provide for the things that a strategic plan and an operational plan for the board must provide for under the standard or this part; and
- (c) be accompanied by—
 - (i) a statement of resource implications, and major policy changes, resulting from the proposed plan; and
 - (ii) any budget documents the board has prepared for the State’s funding of the board.

‘(4) The board and the Minister must try to reach agreement on the draft plans as soon as possible and in any event not later than 1 month before the start of the financial year.

‘Special procedures for draft strategic and operational plans

‘39.(1) The Minister may return the draft strategic and operational plans to the board and ask it—

- (a) to consider, or further consider, anything and deal with the thing in the draft plans; and
- (b) to revise the draft plans in the light of its consideration or further consideration.

‘(2) The board must comply with the request as a matter of urgency but subsection (1) does not require the board to amend the draft plans.

‘(3) If the draft plans have not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plans or either of them; or
- (b) to make specified modifications of the draft plans or either of them.

‘(4) The board must immediately comply with the direction and include a copy of the direction in the plans, or the plan concerned.

‘(5) The Minister may act under subsection (1) or (3) for a thing having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the implications.

‘Strategic and operational plans on agreement

‘40.(1) When the draft strategic and operational plans have been agreed to in writing by the Minister, they become the board’s strategic and operational plans for the relevant financial year.

‘(2) However, the Minister must not agree to the plans for subsection (1) until Parliament appropriates amounts for the department for the relevant financial year.

‘Strategic and operational plans pending agreement

‘**41.(1)** This section applies if the Minister and the board have not agreed to draft strategic and operational plans before the start of the relevant financial year.

‘(2) The draft plans submitted, or last submitted, by the board to the Minister before the start of the financial year, with any modifications made by the board, whether before or after that time, at the direction of the Minister, are taken to be the board’s strategic and operational plans.

‘(3) Subsection (2) applies until draft strategic and operational plans become the board’s strategic and operational plans under section 40.

‘Modifications of strategic and operational plans

‘**42.(1)** The board may modify its strategic or operational plan only with the written agreement of the Minister.

‘(2) The Minister may, by written notice, direct the board to modify its strategic or operational plan.

‘(3) The Minister may act under subsection (1) or (2) for a modification having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the modification.

‘State’s agreed triennial funding

‘**43.** The board’s strategic plan must include the State’s agreed funding proposals for the board for the period covered by the plan or, if the period is more than 3 years, the first 3 years.

‘Elements of operational plans

‘**44.** The board’s operational plan must include the following—

- (a) targets for, and ways of measuring, outputs the board intends to supply;
- (b) identification of the outputs that are not in the board’s commercial interests to supply;

- (c) identification of the outputs intended to be funded by amounts appropriated by Parliament for the department, or by other grants to the board;
- (d) identification of any outputs intended to be funded from the board's commercial and fundraising activities;
- (e) an outline of the nature and scope of activities, including commercial and fundraising activities, the board proposes to undertake;
- (f) an outline of the major investments and borrowings the board intends to make;
- (g) an outline of the board's risk management policies and procedures;
- (h) an outline of the main undertakings proposed by the board.

'Information systems and physical assets strategic plans

'45. The board's information systems and physical assets strategic plans under the standard must be included in the board's strategic plan.

'PART 3A—ACCOUNTABILITY MATTERS

'Board to keep Minister informed

'45A.(1) The board must—

- (a) keep the Minister reasonably informed of the board's operations including its financial and operational performance and the achievement of its goals; and
- (b) give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of its goals under its strategic plan or significantly affect its performance in delivering the

outputs under its operational plan—immediately inform the Minister of the matters and its opinion about them.

‘(2) Subsection (1) does not limit the matters of which the board is required to keep the Minister informed, or limit the reports or information that the board is required, or may be required, to give to the Minister, by another Act.

‘Monitoring and assessment of board

‘45B.(1) The Minister may ask an appropriately qualified officer of the department or another appropriately qualified person to investigate, and report to the Minister on, any matter relating to the board.

‘(2) The person may give written directions to the board for the investigation.

‘(3) Without limiting subsection (2), the person may direct the board—

- (a) to give to the person any information about the board that the person considers necessary or desirable in connection with the investigation; and
- (b) to permit other persons authorised by the person to have access to specified records and other documents about the board that the person considers necessary or desirable in connection with the investigation; and
- (c) to take steps the person considers necessary or desirable for the investigation.

‘(4) The board must ensure that any direction given to it under this section is complied with.

‘(5) Before reporting on the investigation to the Minister, the person must consult with the board about the report.

‘PART 3B—REPORTING

‘Annual report

‘45C. The board’s annual report under the *Financial Administration and Audit Act 1977* must include—

- (a) a summary of the operational plan for the relevant financial year; and
- (b) a summary of any modifications of the operational plan during the relevant financial year; and
- (c) particulars of any directions given to the board by the Minister that relate to the relevant financial year; and
- (d) particulars of the impact on the financial position of the board of any modifications of the operational plan, and any directions given to the board by the Minister, that relate to the relevant financial year.’.

Replacement of ss 46–49

38. Sections 46 to 49—

omit, insert—

‘Delegation by Minister

‘46.(1) The Minister may delegate the Minister’s powers under this Act to an appropriately qualified officer of the department.

‘(2) However, the Minister may not delegate any of the following powers—

- (a) the power to give the board a function for section 20(1)(h);⁶
- (b) the power to direct the board under sections 21B, 39(3) and 42(2);⁷

⁶ Section 20 (Functions)

⁷ Sections 21B (Directions by Minister), 39 (Special procedures for draft strategic and operational plans) and 42 (Modifications of strategic and operational plans)

- (c) the power to agree in writing to, and agree in writing to modifications of, the board's strategic and operational plans;
- (d) the power to ask a person to investigate and report under section 45B(1).⁸

'Protection from liability of members

'47.(1) A member is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

'(2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the board.

'(3) This section is subject to section 48.

'Illegal borrowing

'48.(1) Subsection (2) applies if the board borrows an amount that it is not authorised to borrow under an Act.

'(2) The members who consented to the borrowing are jointly and severally liable to repay the amount, and any interest on it, to the person from whom it was borrowed and the person may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

'(3) Subsection (4) applies if an amount is appropriated from the board's moneys to repay an amount mentioned in subsection (1) or interest on the amount.

'(4) The members who consented to the appropriation are jointly and severally liable to refund the amount, together with interest on the amount at a rate decided by the Treasurer, and the Treasurer may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

'(5) If the Treasurer brings an action under subsection (4)—

- (a) the Treasurer is entitled to costs as between solicitor and client; and
- (b) any amount recovered must be paid to the board.

⁸ Section 45B (Monitoring and assessment of board)

‘(6) Subsection (2) does not apply to a member if, at the time the member consented to the borrowing, the member believed on grounds that were reasonable in all the circumstances that the board was authorised under an Act to borrow the amount.

‘(7) Subsection (4) does not apply to a member if—

- (a) subsection (2) does not apply to the member because of subsection (6); or
- (b) the member did not consent to the borrowing.

‘Application of certain Acts

‘49.(1) The board is a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the board’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

‘Application of rule against perpetuities

‘49A. For the application of the rule against perpetuities to gifts to the board, the board’s purposes are taken to be charitable.

‘Exemption from stamp duty

‘49B. Stamp duty is not payable for the transfer of any property to the board.

‘Art gallery etc. taken to be public place

‘49C.(1) This section applies for any Act conferring or imposing on a police officer powers or functions in respect of a public place or providing for offences committed in a public place.

‘(2) A building or another place consisting of the art gallery or a branch of the art gallery is taken to be a public place.

‘(3) Subsection (2) must not be construed to prevent or limit the

imposition by the board of conditions of entry for the building or other place.

‘Board’s seal

‘49D.(1) The board’s seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

‘(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more members; or
- (b) at least 1 member and the director; or
- (c) a member or the director, and 1 or more other persons authorised by the board.

‘Authentication of documents

‘49E. A document made by the board (other than a document required by law to be sealed) is sufficiently authenticated if it is signed by —

- (a) the chairperson; or
- (b) the director; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the board; or
 - (ii) direction of the director.

‘Reward for information

‘49F.(1) The board may offer and pay a reward to a person who gives the board information about an offence it believes or suspects is committed in relation to its property or property in its possession.

‘(2) If a court finds a person guilty of the offence and the board has paid, or agreed to pay, the reward for information about the offence, the court may order the person to pay to the board the amount of the reward.

‘(3) The amount is a debt owing by the person to the board.

‘(4) Subsection (2)—

- (a) applies whether or not a conviction is recorded; and
- (b) does not limit the court's jurisdiction to impose a penalty or make another order for the offence.

‘Proceedings for offences

‘49G. A proceeding for an offence under this Act may be instituted summarily under the *Justices Act 1886*.

‘Description of property in proceeding

‘49H. In any proceeding taken for an offence committed in relation to property, or property in the possession, of the board and in which it is material to prove ownership of the property, it is enough to allege the board owns the property.’.

Omission of s 50 (By-law making power)

39. Section 50—

omit.

Insertion of new pt 5

40. After section 53—

insert—

‘PART 5—SAVING AND TRANSITIONAL

‘Certain members continue in office

‘54.(1) A person who, immediately before the commencement of this section, was a trustee under section 8(a) or (c) of this Act as in force at that time (the **“pre-amended Act”**) continues in office, subject to this Act, as a member.

‘(2) If the person who was a trustee under section 8(a) of the pre-amended Act was the chief executive, the person continues in office until 5 years after the commencement of this section, or the person stops

holding the office of chief executive, whichever happens first.

‘(3) If the person who was a trustee under section 8(a) of the pre-amended Act was the chief executive’s nominee—

- (a) the chief executive may withdraw the person’s nomination at any time; and
- (b) the person continues in office until 5 years after the commencement of this section, or the person’s nomination is withdrawn, whichever happens first.

‘(4) A trustee appointed under section 8(c) of the pre-amended Act continues in office in terms of the trustee’s appointment.

‘(5) On the commencement of this section, a person who was a trustee under section 8(b) of the pre-amended Act does not continue in office as a member.

‘(6) The trustee who immediately before the commencement of this section was the chairperson or deputy chairperson under the pre-amended Act continues in that office in terms of the trustee’s appointment.

‘Director continues in office

‘55. The person who, immediately before the commencement of this section, was the director under this Act continues in office in terms of the person’s appointment as director.

‘Numbering and renumbering of Act

‘56. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

‘Expiry of pt 5

‘57. This part expires 5 years after this section commences.’.

PART 4—AMENDMENT OF QUEENSLAND MUSEUM ACT 1970

Act amended in pt 4

41. This part and schedule 3 amend the *Queensland Museum Act 1970*.

Amendment of s 3 (Definitions)

42.(1) Section 3, “**board**” and “**member**”—

omit.

(2) Section 3—

insert—

“**appropriately qualified**”, for a person to whom a power under this Act may be delegated or who is asked by the Minister to investigate and report on a matter relating to the board, includes having the qualifications, experience or standing appropriate to exercise the power or comply with the request.

Example of standing—

A person’s seniority in an entity.

“**board**” means the Board of the Queensland Museum.

“**deputy chairperson**” means the deputy chairperson of the board.

“**director**” means the director of the museum.

“**member**” means a member of the board.

“**operational plan**”, of the board, means the board’s operational plan developed under part 3 of this Act and part 2 of the standard.

“**standard**” means the *Financial Management Standard 1997*.

“**strategic plan**”, of the board, means the board’s strategic plan developed under part 3 of this Act and part 2 of the standard.’.

Replacement of pt 2, div 1 (Division 1—Appointment of board)

43. Part 2, division 1—

omit, insert—

Division 1—Constitution and membership**‘Establishment of board**

‘4. The entity previously established as the Queensland Museum Board of Trustees is continued in existence under the name Board of the Queensland Museum.

‘Legal status of board

‘5. The board—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

‘Board’s relationship with State

‘6. The board represents the State.

‘Composition of board

‘7.(1) The board is to consist of the number of members appointed by the Governor in Council.

‘(2) In appointing a member, regard must be had to the person’s ability to contribute to the board’s performance and the implementation of its strategic and operational plans.

‘(3) A member must be appointed under this Act and not the *Public Service Act 1996*.

‘Role of members

‘8. The role of the members includes the following—

- (a) being responsible for the board’s management;
- (b) ensuring, as far as possible, the board achieves, and acts in accordance with, its strategic and operational plans;
- (c) accounting to the Minister for the board’s performance;
- (d) ensuring the board otherwise performs its functions in a proper, effective and efficient way.

‘Eligibility for appointment

‘9. A person is not eligible for appointment as a member if the person is not able to manage a corporation because of the Corporations Law, section 229.⁹

‘Chairperson and deputy chairperson of board

‘10.(1) The Governor in Council must appoint a member as chairperson of the board.

‘(2) The appointment may be made by the instrument appointing the person concerned as a member of the board.

‘(3) The members must elect one of them as deputy chairperson of the board.

‘(4) The members must act under subsection (3) whenever there is a vacancy in the office of deputy chairperson, including a vacancy occurring because the office has not been filled.

‘(5) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson by signed notice given to the Minister.

‘(6) The chairperson or deputy chairperson may act under subsection (5) and remain a member.

⁹ Corporations Law, section 229 (Certain persons not to manage corporations)

‘Duration of appointment

‘**11.(1)** A member is appointed for the term (not more than 5 years) stated in the member’s instrument of appointment.

‘**(2)** The office of a member becomes vacant if—

- (a) the member resigns by signed notice given to the Minister; or
- (b) the person is not eligible to be appointed as a member; or
- (c) the member’s appointment is ended under subsection (3).

‘**(3)** The Governor in Council may, at any time, end the appointment of all or any members for any reason or none.

‘Conditions of appointment

‘**11A.(1)** A member holds office on the conditions not provided for by this Act that are decided by the Governor in Council.

‘**(2)** Except as decided by the Governor in Council, a member is not entitled to receive any payment, interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a member; or
- (b) in connection with resignation from office, or other termination of office, as a member, chairperson or deputy chairperson.’.

Amendment of s 12 (Functions of board)

44.(1) Section 12(1)(d) to (f)—

omit, insert—

- ‘(d) to perform the functions given to the board under another Act; and
- (e) to perform functions that are incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions mentioned in paragraphs (a) to (d); and
- (f) to perform functions of the type to which paragraph (e) applies and which are given to the board in writing by the Minister.’.

(2) Section 12(2)—

omit, insert—

‘(2) In performing the function mentioned in subsection (1)(b), the board is to have regard to the desirability of providing for the storage of items and the promotion of research relating to Queensland.

‘(3) Before giving a function for subsection (1)(f), the Minister must consult with the board about the function.’.

Replacement of ss 13 and 13A

45. Sections 13 and 13A—

omit, insert—

‘Division 2A—Legal capacity and powers

‘Objects of division

‘**13.** The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to the board; and
- (b) ensuring the board gives effect to any restrictions on its functions or powers, but without affecting the validity of its dealings with outsiders.

‘General powers

‘**13A.(1)** For performing its functions, the board has all the powers of an individual and may for example—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) engage consultants; and
- (d) appoint agents and attorneys; and
- (e) charge, and fix terms, for goods, services, facilities and information supplied by it; and
- (f) do anything else necessary or desirable to be done in performing

its functions.

‘(2) Without limiting subsection (1), the board has the powers given to it under this or another Act.

‘(3) The board may exercise its powers inside and outside Queensland, including outside Australia.

‘(4) In this section—
“power” includes legal capacity.

‘Directions by Minister

‘13B. The board is subject to written directions of the Minister in exercising its powers.

‘Restrictions on powers of board

‘13C.(1) Section 13A has effect in relation to the board subject to any restrictions expressly imposed under this or another Act.

‘(2) Section 13A also has effect in relation to the board subject to any restrictions expressly imposed by—

- (a) any relevant strategic or operational plan of the board; and
- (b) any relevant directions given to the board under section 13B by the Minister.

‘(3) The board contravenes this section if it—

- (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than in pursuance of its functions.

‘(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

‘(5) An officer of the board who is involved in the contravention contravenes this subsection.

‘(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

‘(7) The board or officer of the board is not guilty of an offence merely because of the relevant contravention.

‘(8) In this section—

“**officer**”, of the board, means—

- (a) a member; or
- (b) the director; or
- (c) an officer mentioned in section 23A(3); or
- (d) an employee of the board.

“**restriction**” includes prohibition.

‘Persons having dealings with board etc.

‘**13D.(1)** A person having dealings with the board is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board that the matters that the person is entitled to assume were not correct must be disregarded.

‘(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from the board (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

‘(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by the board to be an officer or agent of the board has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the board who has authority to issue a document on behalf of the board has authority to warrant that the document is genuine and that an officer or agent of the board who has authority to issue a certified copy of a document on behalf of

- the board has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the board if—
- (i) it bears what appears to be an imprint of the board’s seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer or agent of the board; and
- (e) that the officers and agents of the board have properly performed their duties to the board.

‘(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person’s connection or relationship with the board, the person ought to know that the assumption would be incorrect.

‘(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the board—subsection (1) does not apply to any assertion by the board in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the board of title to property—subsection (2) does not apply to any assertion by the board or another person in relation to the assumption.

‘(6) In this section—

“**officer**”, of the board, means—

- (a) a member; or
- (b) the director; or
- (c) an officer mentioned in section 23A(3); or
- (d) an employee of the board.

‘Branches

‘13E.(1) The board may establish branches of the museum.

‘(2) However, the board may not contract with someone else to establish a branch without the approval of the Governor in Council.

‘Disposal of specimens accepted by the board

‘13F.(1) This section applies if—

- (a) a specimen of flora or fauna or a thing that is not flora or fauna (the “**specimen**”) is accepted by the board for identification, investigation or another purpose; and
- (b) the specimen is not collected by the person who gave it within 1 month after acceptance or, if the board has agreed to hold the specimen for a certain period, 1 month after the period ends.

‘(2) Subject to any arrangement about the specimen between the board and the person, the board may—

- (a) sell the specimen by public auction; or
- (b) exchange the specimen for another specimen; or
- (c) if the board considers on reasonable grounds that, because of the specimen’s value, it is not viable to sell or exchange it—dispose of the specimen in another way.

‘(3) However, if the board intends to sell, exchange or otherwise dispose of the specimen, it must give the person at least a month’s written notice of its intention.

‘(4) If the person’s address is not known to the board, the notice may be given to the person by publishing it in a daily newspaper circulating generally in the State.

‘(5) Subsections (3) and (4) do not apply if the specimen is perishable and is disposed of under subsection (2)(c).

‘(6) A notice under subsection (4) may form part of a notice under section 13I.

‘(7) If the specimen is sold, after deducting the costs of and incidental to the sale, the proceeds must be held by the board for the person for at least

1 year after the sale.

‘(8) If the proceeds are not claimed by the person within 1 year after the sale, the proceeds may be used by the board for its functions.

‘Use of proceeds from sale of specimens

‘13G. The proceeds of the sale by the board of any specimen other than under section 13F must, after deduction of the costs of and incidental to the sale, be used by the board for its functions.

‘Disposal of certain abandoned property

‘13H.(1) This section applies if any property, other than a specimen to which section 13F applies—

- (a) is found in any building or other place consisting of the museum or a branch of the museum; and
- (b) there are reasonable grounds for suspecting the property has been abandoned by the person who last used it; and
- (c) the property is unclaimed after 4 months.

‘(2) The board may sell the property by public auction.

‘(3) Despite subsection (2), if the board considers on reasonable grounds that, because of the property’s value, it is not viable to sell it, the board may dispose of the property in another way.

‘(4) Despite subsection (2), if the board considers on reasonable grounds that the property is in a dangerous condition or unfit for use for the purpose for which it was intended to be used, the board may cause it to be destroyed.

‘Board must give notice of public auction

‘13I.(1) Before the board sells any property under section 13F or 13H, it must first publish a notice in a daily newspaper circulating generally in the State.

‘(2) The notice must—

- (a) identify the property; and

- (b) state the property is to be sold by auction; and
- (c) state how the person entitled to the property may recover it before the auction; and
- (d) state the time and place of the auction.

‘Effect of sale or other disposal of specimens or other property

‘13J.(1) This section applies to the sale or other disposal of any property under section 13F or 13H.

‘(2) The sale or other disposal is valid against all persons.

‘(3) Compensation is not recoverable against the board for the sale or other disposal.

‘(4) Stamp duty is not payable for the sale or other disposal.

‘Committees

‘13K.(1) The board may establish committees of the board.

‘(2) A committee may exercise the powers delegated to it by the board under section 23.

‘(3) A committee is subject to the directions of the board in exercising the powers.

‘(4) A person may be appointed to a committee whether or not the person is a member of the board.

‘(5) In appointing a person to a committee, regard must be had to the person’s ability to take part in the exercise of the powers delegated to the committee.’.

Replacement of ss 16–23B

46. Sections 16 to 23B—

omit, insert—

‘Conduct of business

‘14. Subject to this Act, the board may conduct its business and proceedings at meetings in the way it decides.

‘Presiding at meetings

‘15.(1) The chairperson is to preside at all meetings at which the chairperson is present.

‘(2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

‘(3) If both the chairperson and deputy chairperson are not present at a meeting, the member chosen by the members present at the meeting is to preside.

‘Quorum

‘16.(1) A quorum of the board consists of a majority of members for the time being holding office.

‘(2) A meeting of the board at which a quorum is present may perform the functions and exercise the powers of the board.

‘Meetings

‘17.(1) The board may hold its meetings where and when it decides.

‘(2) The board may hold meetings, or allow members to take part in meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

‘Resolutions without meetings

‘18.(1) If at least a majority of members sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the

board held on the day on which the document is signed or, if the members do not sign it on the same day, the day on which the last of the members constituting the majority signs the document.

‘(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each member must be immediately advised of the matter and given a copy of the terms of the resolution.

‘(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to constitute a single document.

‘Minutes

‘19. The board must keep minutes of its proceedings.

‘Conduct of meetings

‘20.(1) A decision of the board may be made by a majority of members present at a meeting of the board.

‘(2) If a member abstains from voting, the member is taken to have voted against the matter being decided.

‘(3) If the votes are equal, the person presiding has a casting vote.

‘Disclosure of interests by members

‘21.(1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the board, the member must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the member’s knowledge.

Maximum penalty—100 penalty units.

‘(2) The disclosure must be recorded in the board’s minutes.

‘Voting by interested member

‘22.(1) A member who has a material personal interest in a matter that is being considered by the board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution under subsection (2) (a “**related resolution**”) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

‘(3) If, because of this section, a member is not present at a meeting of the board for considering or deciding a matter, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the matter at the meeting.

‘Delegation by board

‘23. The board may, by resolution, delegate its powers to—

- (a) a member; or
- (b) a committee of members; or
- (c) the director; or
- (d) a committee established under section 13K¹⁰; or
- (e) an appropriately qualified officer mentioned in section 23A(3) or an appropriately qualified employee of the board.

¹⁰ Section 13K (Committees)

Division 4—Director and staff**‘Director and other officers**

‘23A.(1) The director of the museum is to be appointed by the Governor in Council on the board’s recommendation.

‘(2) The director holds office on the conditions not provided for by this Act that are decided by the board.

‘(3) Other officers are to be employed under the *Public Service Act 1996*.

‘Duties of director

‘23B. The director is, under the members, to manage the board.

‘Director to attend board meetings

‘23C.(1) This section applies if the director is not a member.

‘(2) The director must attend all meetings of the board unless excused or precluded by the board.

‘Things done by director

‘23D. Anything done in the name of, or for, the board by the director is taken to have been done by the board.

‘Delegation by director

‘23E.(1) The director may delegate the director’s powers (including a power delegated to the director by the board) to an appropriately qualified employee of the board, or an appropriately qualified officer mentioned in section 23A(3).

‘(2) Subsection (1) has effect subject to any directions by the board.

‘Superannuation schemes

‘23F. The board may—

- (a) establish and maintain, or amend, superannuation schemes; or
- (b) join in establishing and maintaining, or amending, superannuation schemes; or
- (c) take part in superannuation schemes.’.

Replacement of pt 3 (Financial provisions)

47. Part 3—

omit, insert—

‘PART 3—PLANNING

‘Division 1—Preliminary

‘How pt 3 applies if offices of Minister and Treasurer are held by the 1 person

‘**27.(1)** This section applies if, under a provision of this part, a thing is required to be done by or in relation to the Minister and the Treasurer and the Minister is the Treasurer.

‘**(2)** The provision is satisfied if the thing is done by or in relation to the Minister.

‘Part additional to standard

‘**28.(1)** This part is additional to and does not derogate from the standard.

‘**(2)** However, if there is an inconsistency between this part and the standard, this part prevails to the extent of the inconsistency.

‘**(3)** Also, if something is required to be done under this part and the same thing, or something to the same effect, is required to be done under the standard, compliance with this part is sufficient compliance with the standard.

Division 2—Strategic and operational plans for board**‘Draft strategic and operational plans**

‘**29.(1)** The board must prepare and submit to the Minister for the Minister’s agreement, draft strategic and operational plans for the board not later than 4 months before the start of each financial year.

‘**(2)** The board must give copies of the draft plans to the Treasurer at the same time as it gives the plans to the Minister.

‘**(3)** The draft plans must—

- (a) be in the form approved by the Minister; and
- (b) provide for the things that a strategic plan and an operational plan for the board must provide for under the standard or this part; and
- (c) be accompanied by—
 - (i) a statement of resource implications, and major policy changes, resulting from the proposed plan; and
 - (ii) any budget documents the board has prepared for the State’s funding of the board.

‘**(4)** The board and the Minister must try to reach agreement on the draft plans as soon as possible and in any event not later than 1 month before the start of the financial year.

‘Special procedures for draft strategic and operational plans

‘**30.(1)** The Minister may return the draft strategic and operational plans to the board and ask it—

- (a) to consider, or further consider, anything and deal with the thing in the draft plans; and
- (b) to revise the draft plans in the light of its consideration or further consideration.

‘**(2)** The board must comply with the request as a matter of urgency but subsection (1) does not require the board to amend the draft plans.

‘**(3)** If the draft plans have not been agreed to by the Minister by 1 month

before the start of the financial year, the Minister may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plans or either of them; or
- (b) to make specified modifications of the draft plans or either of them.

‘(4) The board must immediately comply with the direction and include a copy of the direction in the plans, or plan concerned.

‘(5) The Minister may act under subsection (1) or (3) for a thing having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the implications.

‘Strategic and operational plans on agreement

‘31.(1) When the draft strategic and operational plans have been agreed to in writing by the Minister, they become the board’s strategic and operational plans for the relevant financial year.

‘(2) However, the Minister must not agree to the plans for subsection (1) until Parliament appropriates amounts for the department for the relevant financial year.

‘Strategic and operational plans pending agreement

‘32.(1) This section applies if the Minister and the board have not agreed to draft strategic and operational plans before the start of the relevant financial year.

‘(2) The draft plans submitted, or last submitted, by the board to the Minister before the start of the financial year, with any modifications made by the board, whether before or after that time, at the direction of the Minister, are taken to be the board’s strategic and operational plans.

‘(3) Subsection (2) applies until draft strategic and operational plans become the board’s strategic and operational plans under section 31.

‘Modifications of strategic and operational plans

‘33.(1) The board may modify its strategic or operational plan only with the written agreement of the Minister.

‘(2) The Minister may, by written notice, direct the board to modify its strategic or operational plan.

‘(3) The Minister may act under subsection (1) or (2) for a modification having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the modification.

‘State’s agreed triennial funding

‘34. The board’s strategic plan must include the State’s agreed funding proposals for the board for the period covered by the plan or, if the period is more than 3 years, the first 3 years.

‘Elements of operational plans

‘34A. The board’s operational plan must include the following—

- (a) targets for, and ways of measuring, outputs the board intends to supply;
- (b) identification of the outputs that are not in the board’s commercial interests to supply;
- (c) identification of the outputs intended to be funded by amounts appropriated by Parliament for the department, or by other grants to the board;
- (d) identification of any outputs intended to be funded from the board’s commercial and fundraising activities;
- (e) an outline of the nature and scope of activities, including commercial and fundraising activities, the board proposes to undertake;
- (f) an outline of the major investments and borrowings the board intends to make;
- (g) an outline of the board’s risk management policies and

procedures;

- (h) an outline of the main undertakings proposed by the board.

‘Information systems and physical assets strategic plans

‘34B. The board’s information systems and physical assets strategic plan under the standard must be included in the board’s strategic plan.

‘PART 3A—ACCOUNTABILITY MATTERS

‘Board to keep Minister informed

‘34C.(1) The board must—

- (a) keep the Minister reasonably informed of the board’s operations including its financial and operational performance and the achievement of its goals; and
- (b) give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board’s opinion may prevent, or significantly affect, achievement of its goals under its strategic plan or significantly affect its performance in delivering the outputs under its operational plan—immediately inform the Minister of the matters and its opinion about them.

‘(2) Subsection (1) does not limit the matters of which the board is required to keep the Minister informed, or limit the reports or information that the board is required, or may be required, to give to the Minister, by another Act.

‘Monitoring and assessment of board

‘34D.(1) The Minister may ask an appropriately qualified officer of the department or another appropriately qualified person to investigate, and report to the Minister on, any matter relating to the board.

‘(2) The person may give written directions to the board for the investigation.

‘(3) Without limiting subsection (2), the person may direct the board—

- (a) to give to the person any information about the board that the person considers necessary or desirable in connection with the investigation; and
- (b) to permit other persons authorised by the person to have access to specified records and other documents about the board that the person considers necessary or desirable in connection with the investigation; and
- (c) to take steps the person considers necessary or desirable for the investigation.

‘(4) The board must ensure that any direction given to it under this section is complied with.

‘(5) Before reporting on the investigation to the Minister, the person must consult with the board about the report.

‘PART 3B—REPORTING

‘Annual report

‘35. The board’s annual report under the *Financial Administration and Audit Act 1977* must include—

- (a) a summary of the operational plan for the relevant financial year; and
- (b) a summary of any modifications of the operational plan during the relevant financial year; and
- (c) particulars of any directions given to the board by the Minister that relate to the relevant financial year; and
- (d) particulars of the impact on the financial position of the board of any modifications of the operational plan, and any directions

given to the board by the Minister, that relate to the relevant financial year.’.

Replacement of ss 35A–38

48. Sections 35A to 38—

omit, insert—

‘Delegation by Minister

‘**36.(1)** The Minister may delegate the Minister’s powers under this Act to an appropriately qualified officer of the department.

‘**(2)** However, the Minister may not delegate any of the following powers—

- (a) the power to give the board a function for section 12(1)(f);¹¹
- (b) the power to direct the board under sections 13B, 30(3) and 33(2);¹²
- (c) the power to agree in writing to, and agree in writing to modifications of, the board’s strategic and operational plans;
- (d) the power to ask a person to investigate and report under section 34D(1).¹³

‘Protection from liability of persons acting under the Act

‘**37.(1)** The following persons are not civilly liable for an act done, or omission made, honestly and without negligence under this Act—

- (a) a member;
- (b) a person appointed to a committee established under section 13K;¹⁴

¹¹ Section 12 (Functions of board)

¹² Sections 13B (Directions by Minister), 30 (Special procedures for draft strategic and operational plans) and 33 (Modifications of strategic and operational plans)

¹³ Section 34D (Monitoring and assessment of board)

¹⁴ Section 13K (Committees)

(c) an honorary assistant appointed under section 24A.¹⁵

‘(2) If subsection (1) prevents a civil liability attaching to a person, the liability attaches instead to the board.

‘(3) This section is subject to section 38.

‘Illegal borrowing

‘**38.(1)** Subsection (2) applies if the board borrows an amount that it is not authorised to borrow under an Act.

‘(2) The members who consented to the borrowing are jointly and severally liable to repay the amount, and any interest on it, to the person from whom it was borrowed and the person may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

‘(3) Subsection (4) applies if an amount is appropriated from the board’s moneys to repay an amount mentioned in subsection (1) or interest on the amount.

‘(4) The members who consented to the appropriation are jointly and severally liable to refund the amount, together with interest on the amount at a rate decided by the Treasurer, and the Treasurer may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

‘(5) If the Treasurer brings an action under subsection (4)—

(a) the Treasurer is entitled to costs as between solicitor and client; and

(b) any amount recovered must be paid to the board.

‘(6) Subsection (2) does not apply to a member if, at the time the member consented to the borrowing, the member believed on grounds that were reasonable in all the circumstances that the board was authorised under an Act to borrow the amount.

‘(7) Subsection (4) does not apply to a member if—

(a) subsection (2) does not apply to the member because of

¹⁵ Section 24A (Honorary assistants)

subsection (6); or

- (b) the member did not consent to the borrowing.

‘Application of certain Acts

‘38A.(1) The board is a statutory body under the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

‘(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the board’s powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

‘Application of rule against perpetuities

‘38B. For the application of the rule against perpetuities to gifts to the board, the board’s purposes are taken to be charitable.

‘Exemption from stamp duty

‘38C. Stamp duty is not payable for the transfer of any property to the board.

‘Museum etc. taken to be public place

‘38D.(1) This section applies for any Act conferring or imposing on a police officer powers or functions in respect of a public place or providing for offences committed in a public place.

‘(2) A building or another place consisting of the museum or a branch of the museum is taken to be a public place.

‘(3) Subsection (2) must not be construed to prevent or limit the imposition by the board of conditions of entry for the building or other place.

‘Board’s seal

‘38E.(1) The board’s seal is to be kept in the custody directed by the

board and may be used only as authorised by the board.

‘(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more members; or
- (b) at least 1 member and the director; or
- (c) a member or the director, and 1 or more other persons authorised by the board.

‘Authentication of documents

‘38F. A document made by the board (other than a document that is required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson; or
- (b) the director; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the board; or
 - (ii) direction of the director.

‘Reward for information

‘38G.(1) The board may offer and pay a reward to a person who gives the board information about an offence it believes or suspects is committed in relation to its property or property in its possession.

‘(2) If a court finds a person guilty of the offence and the board has paid, or agreed to pay, the reward for information about the offence, the court may order the person to pay to the board the amount of the reward.

‘(3) The amount is a debt owing by the person to the board.

‘(4) Subsection (2)—

- (a) applies whether or not a conviction is recorded; and
- (b) does not limit the court’s jurisdiction to impose a penalty or make another order for the offence.

‘Proceedings for offences

‘38H. A proceeding for an offence under this Act may be instituted summarily under the *Justices Act 1886*.

‘Description of property in proceeding

‘38I. In any proceeding taken for an offence committed in relation to property, or property in the possession, of the board and in which it is material to prove ownership of the property, it is enough to allege the board owns the property.’.

Omission of s 39 (By-laws)

49. Section 39—

omit.

Insertion of new pt 5

50. After section 44—

insert—

‘PART 5—SAVING AND TRANSITIONAL**‘Definition**

‘45. In this part—

“pre-amended Act” means this Act as in force before the commencement of this section.

‘Members continue in office

‘46.(1) A person who, immediately before the commencement of this section, was a member under the pre-amended Act continues in office, subject to this Act, as a member.

‘(2) A member appointed under section 4(5)(a) or (b) of the pre-amended Act continues in office in terms of the member’s appointment.

‘(3) If the person who was a member under section 4(5)(c) of the pre-amended Act was the chief executive, the person continues in office until 5 years after the commencement of this section, or the person stops holding the office of chief executive, whichever happens first.

‘(4) If the person who was a member under section 4(5)(c) of the pre-amended Act was the chief executive’s nominee—

- (a) the chief executive may withdraw the person’s nomination at any time; and
- (b) the person continues in office until 5 years after the commencement of this section, or the person’s nomination is withdrawn, whichever happens first.

‘(5) A person who was a member under section 4(5)(d) of the pre-amended Act continues in office until 5 years after the commencement of this section, or the person stops holding the office of director, whichever happens first.

‘(6) The member who, immediately before the commencement of this section, was the chairperson or deputy chairperson under the pre-amended Act continues in that office in terms of the member’s appointment.

‘Director and other staff continue in office

‘47.(1) A person who, immediately before the commencement of this section, was the director or an employee of the board under this Act continues in office in terms of the person’s appointment or employment.

‘(2) A person who, immediately before the commencement of this section, was an officer under section 23A of the pre-amended Act continues in office as an officer under section 23A(3).

‘Committees continue

‘48. A committee established under section 13A of the pre-amended Act and in existence immediately before the commencement of this section continues as a committee and is taken to have been established under section 13K.

‘Honorary assistants continue in office

‘49. The enactment of the *Arts Legislation Amendment Act 1997* does not affect the continued appointment, under this Act, of an honorary assistant appointed under section 24A of the pre-amended Act.

‘Change of name does not affect legal personality etc.

‘50.(1) The change of name effected by section 4 does not—

- (a) affect the board’s legal personality or identity; or
- (b) affect a right, entitlement or liability of the board or anyone else; or
- (c) make legal proceedings by or against the board defective.

‘(2) Without limiting subsection (1), the change of name of the board does not affect any right, entitlement, liability, exemption or benefit the board would have had or enjoyed apart from the change of name.

‘(3) In addition, but without limiting subsection (1), if a legal proceeding might have been continued or started by or against the board under its former name, it may be continued or started by or against it under its new name.

‘Change of name does not affect existing legal relationships

‘51. Without limiting section 50(1), the change of name—

- (a) does not place the board in breach of contract or otherwise make it guilty of a civil wrong; and
- (b) does not make the board in breach of any instrument, including, for example, an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability; and
- (c) is not taken to fulfil a condition—
 - (i) allowing a person to terminate an instrument or liability or modify the operation or effect of an instrument or liability; or
 - (ii) requiring any amount to be paid before its stated maturity; and

- (d) does not release a surety or other obligee (in whole or part) from an obligation.

‘Numbering and renumbering of Act

‘52. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

‘Expiry of pt 5

‘53. This part expires 5 years after the commencement of this section.’.

PART 5—AMENDMENT OF QUEENSLAND PERFORMING ARTS TRUST ACT 1977

Act amended in pt 5

51. This part and schedule 4 amend the *Queensland Performing Arts Trust Act 1977*.

Replacement of s 3 (Definitions)

52. Section 3—

omit, insert—

‘Definitions

‘3. In this Act—

“**appropriately qualified**”, for a person to whom a power under this Act may be delegated or who is asked by the Minister to investigate and report on a matter relating to the trust, includes having the qualifications, experience or standing appropriate to exercise the power or comply with the request.

Example of standing—

A person's seniority in an entity.

“chairperson” means the chairperson of the trust.

“complex” means the Queensland Performing Arts Complex at Brisbane.

“deputy chairperson” means the deputy chairperson of the trust.

“director” means the director of the trust.

“equipment” includes chattels, costumes, curtains, drapes, furnishings, furniture, light and sound equipment, plant, stage properties and scenery suitable or convenient for the production of stage presentations or presentation of the performing arts.

“member” means a member of the trust.

“operational plan”, of the trust, means the trust's operational plan developed under part 3A of this Act and part 2 of the standard.

“standard” means the *Financial Management Standard 1997*.

“strategic plan”, of the trust, means the trust's strategic plan developed under part 3A of this Act and part 2 of the standard.

“the performing arts” means any of the auditory, dramatic, musical, operatic or visual arts and includes the art of dancing.

“trust” means the Queensland Performing Arts Trust.’

Replacement of ss 5–15

53. Sections 5 to 15—

omit, insert—

‘Establishment of trust

4. The entity called the Queensland Performing Arts Trust continues in existence.

‘Legal status of trust

5. The trust—

- (a) is a body corporate; and

- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

‘Trust’s relationship with State

‘6. The trust represents the State.

‘Composition of trust

‘7.(1) The trust is to consist of the number of members appointed by the Governor in Council.

‘(2) In appointing a member, regard must be had to the person’s ability to contribute to the trust’s performance and the implementation of its strategic and operational plans.

‘(3) A member must be appointed under this Act and not the *Public Service Act 1996*.

‘Role of members

‘8. The role of the members includes the following—

- (a) being responsible for the trust’s management;
- (b) ensuring, as far as possible, the trust achieves, and acts in accordance with, its strategic and operational plans;
- (c) accounting to the Minister for the trust’s performance;
- (d) ensuring the trust otherwise performs its functions in a proper, effective and efficient way.

‘Eligibility for appointment

‘9. A person is not eligible for appointment as a member if the person is not able to manage a corporation because of the Corporations Law, section 229.¹⁶

¹⁶ Corporations Law, section 229 (Certain persons not to manage corporations)

‘Chairperson and deputy chairperson of trust

‘**10.(1)** The Governor in Council must appoint a member as chairperson of the trust.

‘**(2)** The appointment may be made by the instrument appointing the person concerned as a member of the trust.

‘**(3)** The members must elect one of them as deputy chairperson of the trust.

‘**(4)** The members must act under subsection (3) whenever there is a vacancy in the office of deputy chairperson, including a vacancy occurring because the office has not been filled.

‘**(5)** The chairperson or deputy chairperson may resign as chairperson or deputy chairperson by signed notice given to the Minister.

‘**(6)** The chairperson or deputy chairperson may act under subsection (5) and remain a member.

‘Duration of appointment

‘**11.(1)** A member is appointed for the term (not more than 5 years) stated in the member’s instrument of appointment.

‘**(2)** The office of a member becomes vacant if—

- (a) the member resigns by signed notice given to the Minister; or
- (b) the person is not eligible to be appointed as a member; or
- (c) the member’s appointment is ended under subsection (3).

‘**(3)** The Governor in Council may, at any time, end the appointment of all or any members for any reason or none.

‘Conditions of appointment

‘**12.(1)** A member holds office on the conditions not provided for by this Act that are decided by the Governor in Council.

‘**(2)** Except as decided by the Governor in Council, a member is not entitled to receive any payment, interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a member; or
- (b) in connection with resignation from office, or other termination of office, as a member, chairperson or deputy chairperson.’.

Amendment of s 16 (Objects of trust)

54.(1) Section 16—

insert—

- ‘(h) to encourage, for persons resident in Queensland—
 - (i) participation as performers for the performing arts; and
 - (ii) involvement in other aspects of the performing arts;
- (i) to perform the functions given to the trust under another Act;
- (j) to perform functions that are incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions mentioned in paragraphs (a) to (i);
- (k) to perform functions of the type to which paragraph (j) applies and which are given to the trust in writing by the Minister.’.

(2) Section 16—

insert—

‘(2) Before giving a function for subsection (1)(k), the Minister must consult with the trust about the function.’.

Replacement of ss 17–19

55. Sections 17 to 19—

omit, insert—

‘Division 2A—Legal capacity and powers

‘Objects of division

‘17. The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to the trust; and
- (b) ensuring the trust gives effect to any restrictions on its functions or powers, but without affecting the validity of its dealings with outsiders.

‘General powers

‘18.(1) For performing its functions, the trust has all the powers of an individual and may for example—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) engage consultants; and
- (d) appoint agents and attorneys; and
- (e) charge, and fix terms, for goods, services, facilities and information supplied by it; and
- (f) do anything else necessary or desirable to be done in performing its functions.

‘(2) Without limiting subsection (1), the trust has the powers given to it under this or another Act.

‘(3) The trust may exercise its powers inside and outside Queensland, including outside Australia.

‘(4) In this section—

“power” includes legal capacity.

‘Directions by Minister

‘19. The trust is subject to written directions of the Minister in exercising its powers.

‘Restrictions on powers of trust

‘19A.(1) Section 18 has effect in relation to the trust subject to any restrictions expressly imposed under this or another Act.

‘(2) Section 18 also has effect in relation to the trust subject to any restrictions expressly imposed by—

- (a) any relevant strategic or operational plan of the trust; or
- (b) any relevant directions given to the trust under section 19 by the Minister.

‘(3) The trust contravenes this section if it—

- (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than in pursuance of its functions.

‘(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

‘(5) An officer of the trust who is involved in the contravention contravenes this subsection.

‘(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

‘(7) The trust or officer of the trust is not guilty of an offence merely because of the relevant contravention.

‘(8) In this section—

“**officer**”, of the trust, means—

- (a) a member; or
- (b) the director; or
- (c) an employee of the trust.

“**restriction**” includes prohibition.

‘Persons having dealings with trust etc.

‘**19B.(1)** A person having dealings with the trust is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the trust that the matters that the person is entitled to assume were not correct must be disregarded.

‘(2) A person having dealings with a person who has acquired, or

purports to have acquired, title to property from the trust (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the trust or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

‘(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by the trust to be an officer or agent of the trust has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the trust who has authority to issue a document on behalf of the trust has authority to warrant that the document is genuine and that an officer or agent of the trust who has authority to issue a certified copy of a document on behalf of the trust has authority to warrant that the copy is a true copy; and
- (d) that a document has been properly sealed by the trust if—
 - (i) it bears what appears to be an imprint of the trust’s seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer or agent of the trust; and
- (e) that the officers and agents of the trust have properly performed their duties to the trust.

‘(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person’s connection or relationship with the trust, the person ought to know that the assumption would be incorrect.

‘(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the trust—subsection (1) does not apply to any assertion by the trust in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the trust of title to property—subsection (2) does not apply to any assertion by the trust or another person in relation to the assumption.

‘(6) In this section—

“**officer**”, of the trust, means—

- (a) a member; or
- (b) the director; or
- (c) an employee of the trust.

‘**Disposal of property accepted by the trust**

‘**19C.(1)** This section applies if—

- (a) property is accepted by the trust for exhibition or for another purpose; and
- (b) the property is not collected by the person who gave it within 2 years after acceptance or, if the trust has agreed to hold the property for a certain period, 2 years after the period ends.

‘(2) Subject to any arrangement about the property between the trust and the person, the trust may—

- (a) sell the property by public auction; or
- (b) exchange the property for other property; or
- (c) if the trust considers on reasonable grounds that, because of the property’s value, it is not viable to sell or exchange it—dispose of the property in another way.

‘(3) However, if the trust intends to sell, exchange or otherwise dispose of the property, it must give the person at least a month’s written notice of its intention.

‘(4) If the person’s address is not known to the trust, the notice may be given to the person by publishing it in a daily newspaper circulating

generally in the State.

‘(5) A notice under subsection (4) may form part of a notice under section 19E.

‘(6) If the property is sold, after deducting the costs of and incidental to the sale, the proceeds must be held by the trust for the person for at least 1 year after the sale.

‘(7) If the proceeds are not claimed by the person within 1 year after the sale, the proceeds may be used by the trust for its functions.

‘Disposal of certain abandoned property

‘19D.(1) This section applies if any property, other than property to which section 19C applies—

- (a) is found in the complex; and
- (b) there are reasonable grounds for suspecting the property has been abandoned by the person who last used it; and
- (c) the property is unclaimed after 4 months.

‘(2) The trust may sell the property by public auction.

‘(3) Despite subsection (2), if the trust considers on reasonable grounds that, because of the property’s value, it is not viable to sell it, the trust may dispose of the property in another way.

‘(4) Despite subsection (2), if the trust considers on reasonable grounds that the property is in a dangerous condition or unfit for use for the purpose for which it was intended to be used, the trust may cause it to be destroyed.

‘Trust must give notice of public auction

‘19E.(1) Before the trust sells any property under section 19C or 19D it must first publish a notice in a daily newspaper circulating generally in the State.

‘(2) The notice must—

- (a) identify the property; and
- (b) state the property is to be sold by auction; and

- (c) state how the person entitled to the property may recover it before the auction; and
- (d) state the time and place of the auction.

‘Effect of sale or other disposal of property

‘**19F.(1)** This section applies to the sale or other disposal of any property under section 19C or 19D.

‘**(2)** The sale or other disposal is valid against all persons.

‘**(3)** Compensation is not recoverable against the trust for the sale or other disposal.

‘**(4)** Stamp duty is not payable for the sale or other disposal.’.

Replacement of s 22 (Meetings)

56. Section 22—

omit, insert—

‘Presiding at meetings

‘**22.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

‘**(2)** If the chairperson is not present at a meeting, the deputy chairperson is to preside.

‘**(3)** If both the chairperson and deputy chairperson are not present at a meeting, the member chosen by the members present at the meeting is to preside.

‘Meetings

‘**22A.(1)** The trust may hold its meetings where and when it decides.

‘**(2)** The trust may hold meetings, or allow members to take part in meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

‘Resolutions without meetings

‘22B.(1) If at least a majority of members sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the trust held on the day on which the document is signed or, if the members do not sign it on the same day, the day on which the last of the members constituting the majority signs the document.

‘(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the trust, each member must be immediately advised of the matter and given a copy of the terms of the resolution.

‘(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to constitute a single document.’.

Replacement of ss 25–29

57. Sections 25 to 29—

omit, insert—

‘Disclosure of interests by members

‘25.(1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the trust, the member must disclose the nature of the interest to a meeting of the trust as soon as practicable after the relevant facts come to the member’s knowledge.

Maximum penalty—100 penalty units.

‘(2) The disclosure must be recorded in the trust’s minutes.

‘Voting by interested member

‘26.(1) A member who has a material personal interest in a matter that is being considered by the trust must not—

- (a) vote on the matter; or

- (b) vote on a proposed resolution under subsection (2) (a “**related resolution**”) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the trust; or
- (d) otherwise take part in any decision of the trust in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to the matter if the trust has at any time passed a resolution that—

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

‘(3) If, because of this section, a member is not present at a meeting of the trust for considering or deciding a matter, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the matter at the meeting.

‘Delegation by trust

‘27. The trust may, by resolution, delegate its powers to—

- (a) a member; or
- (b) a committee of members; or
- (c) the director; or
- (d) an appropriately qualified employee of the trust.

‘Division 4—Director and staff

‘Director

‘28.(1) The director of the trust is to be appointed by the Governor in Council on the trust’s recommendation.

‘(2) The director holds office on the conditions not provided for by this Act that are decided by the trust.

‘Duties of director

‘29. The director is, under the members, to manage the trust.

‘Director to attend trust meetings

‘29A.(1) This section applies if the director is not a member.

‘(2) The director must attend all meetings of the trust unless excused or precluded by the trust.

‘Things done by director

‘29B. Anything done in the name of, or for, the trust by the director is taken to have been done by the trust.

‘Delegation by director

‘29C.(1) The director may delegate the director’s powers (including a power delegated to the director by the trust) to an appropriately qualified employee of the trust.

‘(2) Subsection (1) has effect subject to any directions by the trust.

‘Employees

‘29D.(1) The trust may employ the persons it considers necessary to perform its functions.

‘(2) Subject to any relevant award or industrial agreement, the trust may decide the employees’ terms of employment.

‘(3) The employees are to be employed under this Act and not the *Public Service Act 1996*.

‘Superannuation schemes

‘29E. The trust may—

- (a) establish and maintain, or amend, superannuation schemes; or
- (b) join in establishing and maintaining, or amending, superannuation schemes; or
- (c) take part in superannuation schemes.’.

Amendment of s 52 (Power to establish investment common funds)

58.(1) Section 52(4), ‘its general fund’—

omit, insert—

‘another fund of the trust (other than an investment common fund)’.

(2) Section 52—

insert—

‘**(6)** This section does not confer a power to invest on the trust.’.

Insertion of new pts 3A–3C

59. After section 52—

insert—

‘PART 3A—PLANNING***‘Division 1—Preliminary*****‘How pt 3A applies if offices of Minister and Treasurer are held by the 1 person**

‘52A.(1) This section applies if, under a provision of this part, a thing is required to be done by or in relation to the Minister and the Treasurer and the Minister is the Treasurer.

‘(2) The provision is satisfied if the thing is done by or in relation to the Minister.

‘Part additional to standard

‘52B.(1) This part is additional to and does not derogate from the standard.

‘(2) However, if there is an inconsistency between this part and the standard, this part prevails to the extent of the inconsistency.

‘(3) Also, if something is required to be done under this part and the same thing, or something to the same effect, is required to be done under the standard, compliance with this part is sufficient compliance with the standard.

‘Division 2—Strategic and operational plans for trust**‘Draft strategic and operational plans**

‘52C.(1) The trust must prepare and submit to the Minister for the Minister’s agreement, draft strategic and operational plans for the trust not later than 4 months before the start of each financial year.

‘(2) The trust must give copies of the draft plans to the Treasurer at the same time as it gives the plans to the Minister.

‘(3) The draft plans must—

- (a) be in the form approved by the Minister; and
- (b) provide for the things that a strategic plan and an operational plan for the trust must provide for under the standard or this part; and
- (c) be accompanied by—
 - (i) a statement of resource implications, and major policy changes, resulting from the proposed plan; and
 - (ii) any budget documents the trust has prepared for the State’s funding of the trust.

‘(4) The trust and the Minister must try to reach agreement on the draft plans as soon as possible and in any event not later than 1 month before the start of the financial year.

‘Special procedures for draft strategic and operational plans

‘52D.(1) The Minister may return the draft strategic and operational plans to the trust and ask it—

- (a) to consider, or further consider, anything and deal with the thing in the draft plans; and
- (b) to revise the draft plans in the light of its consideration or further consideration.

‘(2) The trust must comply with the request as a matter of urgency but subsection (1) does not require the trust to amend the draft plans.

‘(3) If the draft plans have not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by written notice, direct the trust—

- (a) to take specified steps in relation to the draft plans or either of them; or
- (b) to make specified modifications of the draft plans or either of them.

‘(4) The trust must immediately comply with the direction and include a copy of the direction in the plans, or the plan concerned.

‘(5) The Minister may act under subsection (1) or (3) for a thing having resource implications for the trust that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the implications.

‘Strategic and operational plans on agreement

‘52E.(1) When the draft strategic and operational plans have been agreed to in writing by the Minister, they become the trust’s strategic and operational plans for the relevant financial year.

‘(2) However, the Minister must not agree to the plans for subsection (1) until Parliament appropriates amounts for the department for the relevant financial year.

‘Strategic and operational plans pending agreement

‘52F.(1) This section applies if the Minister and the trust have not agreed to draft strategic and operational plans before the start of the relevant financial year.

‘(2) The draft plans submitted, or last submitted, by the trust to the Minister before the start of the financial year, with any modifications made by the trust, whether before or after that time, at the direction of the Minister, are taken to be the trust’s strategic and operational plans.

‘(3) Subsection (2) applies until draft strategic and operational plans become the trust’s strategic and operational plans under section 52E.

‘Modifications of strategic and operational plans

‘52G.(1) The trust may modify its strategic or operational plan only with the written agreement of the Minister.

‘(2) The Minister may, by written notice, direct the trust to modify its strategic or operational plan.

‘(3) The Minister may act under subsection (1) or (2) for a modification having resource implications for the trust that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the modification.

‘State’s agreed triennial funding

‘52H. The trust’s strategic plan must include the State’s agreed funding proposals for the trust for the period covered by the plan or, if the period is more than 3 years, the first 3 years.

‘Elements of operational plans

‘52I. The trust’s operational plan must include the following—

- (a) targets for, and ways of measuring, outputs the trust intends to supply;
- (b) identification of the outputs that are not in the trust’s commercial interests to supply;

- (c) identification of the outputs intended to be funded by amounts appropriated by Parliament for the department, or by other grants to the trust;
- (d) identification of any outputs intended to be funded from the trust's commercial and fundraising activities;
- (e) an outline of the nature and scope of activities, including commercial and fundraising activities, the trust proposes to undertake;
- (f) an outline of the major investments and borrowings the trust intends to make;
- (g) an outline of the trust's risk management policies and procedures;
- (h) an outline of the main undertakings proposed by the trust.

'Information systems and physical assets strategic plans

'52J. The trust's information systems and physical assets strategic plans under the standard must be included in the trust's strategic plan.

'PART 3B—ACCOUNTABILITY MATTERS

'Trust to keep Minister informed

'52K.(1) The trust must—

- (a) keep the Minister reasonably informed of the trust's operations including its financial and operational performance and the achievement of its goals; and
- (b) give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the trust's opinion may prevent, or significantly affect, achievement of its goals under its strategic plan or significantly affect its performance in delivering the outputs under its operational plan—immediately inform the

Minister of the matters and its opinion about them.

‘(2) Subsection (1) does not limit the matters of which the trust is required to keep the Minister informed, or limit the reports or information that the trust is required, or may be required, to give to the Minister, by another Act.

‘Monitoring and assessment of trust

‘52L.(1) The Minister may ask an appropriately qualified officer of the department or another appropriately qualified person to investigate, and report to the Minister on, any matter relating to the trust.

‘(2) The person may give written directions to the trust for the investigation.

‘(3) Without limiting subsection (2), the person may direct the trust—

- (a) to give to the person any information about the trust that the person considers necessary or desirable in connection with the investigation; and
- (b) to permit other persons authorised by the person to have access to specified records and other documents about the trust that the person considers necessary or desirable in connection with the investigation; and
- (c) to take steps the person considers necessary or desirable for the investigation.

‘(4) The trust must ensure that any direction given to it under this section is complied with.

‘(5) Before reporting on the investigation to the Minister, the person must consult with the trust about the report.

‘PART 3C—REPORTING

‘Annual report

‘52M. The trust’s annual report under the *Financial Administration and Audit Act 1977* must include—

- (a) a summary of the operational plan for the relevant financial year; and
- (b) a summary of any modifications of the operational plan during the relevant financial year; and
- (c) particulars of any directions given to the trust by the Minister that relate to the relevant financial year; and
- (d) particulars of the impact on the financial position of the trust of any modifications of the operational plan, and any directions given to the trust by the Minister, that relate to the relevant financial year.’.

Replacement of ss 53 and 54

60. Sections 53 and 54—

omit, insert—

‘Delegation by Minister

‘53.(1) The Minister may delegate the Minister’s powers under this Act to an appropriately qualified officer of the department.

‘(2) However, the Minister may not delegate any of the following powers—

- (a) the power to give the trust a function for section 16(1)(j);¹⁷
- (b) the power to direct the trust under sections 19, 52D(3) and 52G(2);¹⁸

¹⁷ Section 16 (Functions of trust)

¹⁸ Sections 19 (Directions by Minister), 52D (Special procedures for draft strategic and operational plans) and 52G (Modifications of strategic and operational plans)

- (c) the power to agree in writing to, and agree in writing to modifications of, the trust's strategic and operational plans;
- (d) the power to ask a person to investigate and report under section 52L(1).¹⁹

'Protection from liability of members

'54.(1) A member is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

'(2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the trust.

'(3) This section is subject to section 54A.

'Illegal borrowing

'54A.(1) Subsection (2) applies if the trust borrows an amount that it is not authorised to borrow under an Act.

'(2) The members who consented to the borrowing are jointly and severally liable to repay the amount, and any interest on it, to the person from whom it was borrowed and the person may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

'(3) Subsection (4) applies if an amount is appropriated from the trust's moneys to repay an amount mentioned in subsection (1) or interest on the amount.

'(4) The members who consented to the appropriation are jointly and severally liable to refund the amount, together with interest on the amount at a rate decided by the Treasurer, and the Treasurer may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

'(5) If the Treasurer brings an action under subsection (4)—

- (a) the Treasurer is entitled to costs as between solicitor and client; and
- (b) any amount recovered must be paid to the trust.

¹⁹ Section 52L (Monitoring and assessment of trust)

‘(6) Subsection (2) does not apply to a member if, at the time the member consented to the borrowing, the member believed on grounds that were reasonable in all the circumstances that the trust was authorised under an Act to borrow the amount.

‘(7) Subsection (4) does not apply to a member if—

- (a) subsection (2) does not apply to the member because of subsection (6); or
- (b) the member did not consent to the borrowing.

‘Application of rule against perpetuities

‘54B. For the application of the rule against perpetuities to gifts to the trust, the trust’s purposes are taken to be charitable.’.

Replacement of ss 56–59

61. Sections 56 to 59—

omit, insert—

‘Complex taken to be public place

‘56.(1) This section applies for any Act conferring or imposing on a police officer powers or functions in respect of a public place or providing for offences committed in a public place.

‘(2) The complex is taken to be a public place.

‘(3) Subsection (2) must not be construed to prevent or limit the imposition by the trust of conditions of entry for the complex.

‘Trust’s seal

‘57.(1) The trust’s seal is to be kept in the custody directed by the trust and may be used only as authorised by the trust.

‘(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more members; or
- (b) at least 1 member and the director; or

- (c) a member or the director, and 1 or more other persons authorised by the trust.

‘Authentication of documents

‘58. A document made by the trust (other than a document required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson; or
- (b) the director; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the trust; or
 - (ii) direction of the director.

‘Reward for information

‘59.(1) The trust may offer and pay a reward to a person who gives the trust information about an offence it believes or suspects is committed in relation to its property or property in its possession.

‘(2) If a court finds a person guilty of the offence and the trust has paid, or agreed to pay, the reward for information about the offence, the court may order the person to pay to the trust the amount of the reward.

‘(3) The amount is a debt owing by the person to the trust.

‘(4) Subsection (2)—

- (a) applies whether or not a conviction is recorded; and
- (b) does not limit the court’s jurisdiction to impose a penalty or make another order for the offence.

‘Proceedings for offences

‘59A. A proceeding for an offence under this Act may be instituted summarily under the *Justices Act 1886*.’.

Amendment of s 60 (Description of property in complaint)

62. Section 60, ‘the stealing’ to ‘trust and’—

omit, insert—

‘an offence committed in respect of property, or property in the possession, of the trust and’.

Omission of s 64 (By-law making power)

63. Sections 64—

omit.

Insertion of new pt 5

64. After section 65—

insert—

‘PART 5—SAVING AND TRANSITIONAL**‘Members continue in office**

‘**66.(1)** A person who, immediately before the commencement of this section, was a member under this Act as in force at that time (the “**pre-amended Act**”) continues in office, subject to this Act, as a member.

‘**(2)** If the person who was a member under section 6(a) of the pre-amended Act was the chief executive, the person continues in office until 5 years after the commencement of this section, or the person stops holding the office of chief executive, whichever happens first.

‘**(3)** If the person who was a member under section 6(a) of the pre-amended Act was the chief executive’s nominee—

- (a) the chief executive may withdraw the person’s nomination at any time; and
- (b) the person continues in office until 5 years after the commencement of this section, or the person’s nomination is withdrawn, whichever happens first.

‘**(4)** A person who was a member under section 6(b) of the pre-amended

Act continues in office until 5 years after the commencement of this section, or the person stops holding the office of director, whichever happens first.

‘(5) A member appointed under section 6(c) of the pre-amended Act continues in office in terms of the member’s appointment.

‘(6) The member who immediately before the commencement of this section was the chairperson or deputy chairperson under the pre-amended Act continues in that office in terms of the member’s appointment.

‘Director and employees continue in office

‘67. The enactment of the *Arts Legislation Amendment Act 1997* does not affect the continued employment of the director or an employee of the trust under this Act.

‘Numbering and renumbering of Act

‘68. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

‘Expiry of pt 5

‘69. This part expires 5 years after the commencement of this section.’.

PART 6—AMENDMENT OF ROYAL QUEENSLAND THEATRE COMPANY ACT 1970

Act amended in pt 6

65. This part and schedule 5 amend the *Royal Queensland Theatre Company Act 1970*.

Replacement of ss 2–4

66. Sections 2 to 4—

omit, insert—

‘Definitions

‘2. In this Act—

“appropriately qualified”, for a person to whom a power under this Act may be delegated or who is asked by the Minister to investigate and report on a matter relating to the theatre company, includes having the qualifications, experience or standing appropriate to exercise the power or comply with the request.

Example of standing—

A person’s seniority in an entity.

“chairperson” means the chairperson of the theatre company.

“deputy chairperson” means the deputy chairperson of the theatre company.

“director” means the director of the theatre company.

“member” means a member of the theatre company.

“operational plan”, of the theatre company, means the company’s operational plan developed under part 4 of this Act and part 2 of the standard.

“standard” means the *Financial Management Standard 1997*.

“strategic plan”, of the theatre company, means the company’s strategic plan developed under part 4 of this Act and part 2 of the standard.

“theatre company” means the Royal Queensland Theatre Company.

“theatre equipment” includes chattels, costumes, curtains, drapes, furnishings, furniture, light and sound equipment, plant, stage properties and scenery suitable or convenient for the production of stage presentations.

‘PART 2—THE THEATRE COMPANY

‘Division 1—Constitution and membership

‘Theatre company

‘3. The entity called the Royal Queensland Theatre Company continues in existence.

‘Legal status of theatre company

‘4. The theatre company—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has a common seal; and
- (d) may sue and be sued in its corporate name.

‘Theatre company’s relationship with State

‘4A. The theatre company represents the State.

‘Composition of theatre company

‘4B.(1) The theatre company is to consist of the number of members appointed by the Governor in Council.

‘(2) In appointing a member, regard must be had to the person’s ability to contribute to the theatre company’s performance and the implementation of its strategic and operational plans.

‘(3) A member must be appointed under this Act and not the *Public Service Act 1996*.

‘Role of members

‘4C. The role of members includes the following—

- (a) being responsible for the theatre company's management;
- (b) ensuring, as far as possible, the theatre company achieves, and acts in accordance with, its strategic and operational plans;
- (c) accounting to the Minister for the theatre company's performance;
- (d) ensuring the theatre company otherwise performs its functions in a proper, effective and efficient way.

'Eligibility for appointment

'4D. A person is not eligible for appointment as a member if the person is not able to manage a corporation because of the Corporations Law, section 229.²⁰

'Chairperson and deputy chairperson of theatre company

'4E.(1) The Governor in Council must appoint a member as chairperson of the theatre company.

'(2) The appointment may be made by the instrument appointing the person concerned as a member of the theatre company.

'(3) The members must elect one of them as deputy chairperson of the theatre company.

'(4) The members must act under subsection (3) whenever there is a vacancy in the office of deputy chairperson, including a vacancy occurring because the office has not been filled.

'(5) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson by signed notice given to the Minister.

'(6) The chairperson or deputy chairperson may act under subsection (5) and remain a member.

'Duration of appointment

'4F.(1) A member is appointed for the term (not more than 5 years) stated in the member's instrument of appointment.

²⁰ Corporations Law, section 229 (Certain persons not to manage corporations)

‘(2) The office of a member becomes vacant if—

- (a) the member resigns by signed notice given to the Minister; or
- (b) the person is not eligible to be appointed as a member; or
- (c) the member’s appointment is ended under subsection (3).

‘(3) The Governor in Council may, at any time, end the appointment of all or any members for any reason or none.

‘Conditions of appointment

‘4G.(1) A member holds office on the conditions not provided for by this Act that are decided by the Governor in Council.

‘(2) Except as decided by the Governor in Council, a member is not entitled to receive any payment, interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a member; or
- (b) in connection with resignation from office, or other termination of office, as a member, chairperson or deputy chairperson.

‘Division 2—Functions’.

Amendment of s 5 (Objects of the theatre company)

67.(1) Section 5—

insert—

- ‘(h) to encourage the involvement of persons resident in Queensland in the writing of plays and other aspects of the arts of the theatre;
- (i) to perform the functions given to the theatre company under another Act;
- (j) to perform functions that are incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions mentioned in paragraphs (a) to (i);
- (k) to perform functions of the type to which paragraph (j) applies and which are given to the theatre company in writing by the

Minister.’.

(2) Section 5—

insert—

‘(2) Before giving a function for subsection (1)(k), the Minister must consult with the theatre company about the function.’.

Replacement of ss 6–25

68. Sections 6 to 25 —

omit, insert—

‘Division 3—Legal capacity and powers

‘Objects of division

‘6. The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to the theatre company; and
- (b) ensuring the theatre company gives effect to any restrictions on its functions or powers, but without affecting the validity of its dealings with outsiders.

‘General powers

‘7.(1) For performing its functions, the theatre company has all the powers of an individual and may for example—

- (a) enter into arrangements, agreements, contracts and deeds; and
- (b) acquire, hold, deal with and dispose of property; and
- (c) engage consultants; and
- (d) appoint agents and attorneys; and
- (e) charge, and fix terms, for goods, services, facilities and information supplied by it; and
- (f) do anything else necessary or desirable to be done in performing its functions.

‘(2) Without limiting subsection (1), the theatre company has the powers given to it under this or another Act.

‘(3) The theatre company may exercise its powers inside and outside Queensland, including outside Australia.

‘(4) In this section—
“power” includes legal capacity.

‘Directions by Minister

‘8. The theatre company is subject to written directions of the Minister in exercising its powers.

‘Restrictions on powers of theatre company

‘9.(1) Section 7 has effect in relation to the theatre company subject to any restrictions expressly imposed under this or another Act.

‘(2) Section 7 also has effect in relation to the theatre company subject to any restrictions expressly imposed by—

- (a) any relevant strategic or operational plan of the theatre company;
or
- (b) any relevant directions given to the theatre company under section 8 by the Minister.

‘(3) The theatre company contravenes this section if it—

- (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than in pursuance of its functions.

‘(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

‘(5) An officer of the theatre company who is involved in the contravention contravenes this subsection.

‘(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

‘(7) The theatre company or officer of the theatre company is not guilty of an offence merely because of the relevant contravention.

‘(8) In this section—

“**officer**”, of the theatre company, means—

- (a) a member; or
- (b) the director; or
- (c) an employee of the theatre company.

“**restriction**” includes prohibition.

‘Persons having dealings with theatre company etc.

‘**10.(1)** A person having dealings with the theatre company is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the theatre company that the matters that the person is entitled to assume were not correct must be disregarded.

‘(2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from the theatre company (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the theatre company or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

‘(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by the theatre company to be an officer or agent of the theatre company has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of the theatre company who has authority to issue a document on behalf of the theatre company has authority to warrant that the document is genuine and that an

officer or agent of the theatre company who has authority to issue a certified copy of a document on behalf of the theatre company has authority to warrant that the copy is a true copy; and

- (d) that a document has been properly sealed by the theatre company if—
 - (i) it bears what appears to be an imprint of the theatre company’s seal; and
 - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer or agent of the theatre company; and
- (e) that the officers and agents of the theatre company have properly performed their duties to the theatre company.

‘(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person’s connection or relationship with the theatre company, the person ought to know that the assumption would be incorrect.

‘(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with the theatre company—subsection (1) does not apply to any assertion by the theatre company in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from the theatre company of title to property—subsection (2) does not apply to any assertion by the theatre company or another person in relation to the assumption.

‘(6) In this section—

“**officer**”, of the theatre company, means—

- (a) a member; or

- (b) the director; or
- (c) an employee of the theatre company.

‘Disposal of certain abandoned property

‘11.(1) This section applies if any property—

- (a) is found on a building or other place occupied by the theatre company; and
- (b) there are reasonable grounds for suspecting the property has been abandoned by the person who last used it; and
- (c) the property is unclaimed after 4 months.

‘(2) The theatre company may sell the property by public auction.

‘(3) Despite subsection (2), if the theatre company considers on reasonable grounds that, because of the property’s value, it is not viable to sell it, the theatre company may dispose of the property in another way.

‘(4) Despite subsection (2), if the theatre company considers on reasonable grounds that the property is in a dangerous condition or unfit for use for the purpose for which it was intended to be used, the theatre company may cause it to be destroyed.

‘Theatre company must give notice of public auction

‘12.(1) Before the theatre company sells any property under section 11 it must first publish a notice in a daily newspaper circulating generally in the State.

‘(2) The notice must—

- (a) identify the property; and
- (b) state the property is to be sold by auction; and
- (c) state how the person entitled to the property may recover it before the auction; and
- (d) state the time and place of the auction.

‘Effect of sale or other disposal of property

‘13.(1) This section applies to the sale or other disposal of any property under section 11.

‘(2) The sale or other disposal is valid against all persons.

‘(3) Compensation is not recoverable against the theatre company for the sale or other disposal.

‘(4) Stamp duty is not payable for the sale or other disposal.

‘Division 4—Proceedings and business**‘Conduct of business**

‘14. Subject to this Act, the theatre company may conduct its business and proceedings at meetings in the way it decides.

‘Quorum

‘15.(1) A quorum of the theatre company consists of a majority of the total number of members for the time being holding office.

‘(2) A meeting of the theatre company at which a quorum is present may transact any business of the company and may perform the functions and exercise the powers of the company.

‘Presiding at meetings

‘16.(1) The chairperson is to preside at all meetings at which the chairperson is present.

‘(2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

‘(3) If both the chairperson and deputy chairperson are not present at a meeting, the member chosen by the members present at the meeting is to preside.

‘Meetings

‘17.(1) The theatre company may hold its meetings where and when it decides.

‘(2) The theatre company may hold meetings, or allow members to take part in meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

‘(3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

‘Resolutions without meetings

‘18.(1) If at least a majority of members sign a document containing a statement that they are in favour of a resolution set out in the document, a resolution in those terms is taken to have been passed at a meeting of the theatre company held on the day on which the document is signed or, if the members do not sign it on the same day, the day on which the last of the members constituting the majority signs the document.

‘(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the theatre company, each member must be immediately advised of the matter and given a copy of the terms of the resolution.

‘(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to constitute a single document.

‘Minutes

‘19. The theatre company must keep minutes of its proceedings.

‘Conduct of affairs

‘20.(1) At a meeting of the theatre company—

- (a) a question is decided by a majority of the votes of the members present and voting; and
- (b) each member present has a vote on each question to be decided

and, if the votes are equal, the member presiding has a casting vote.

‘(2) However, if a member is present at a meeting and entitled to vote on a question, but abstains from voting, the member is taken to have voted for the negative.

‘Disclosure of interests by members

‘21.(1) If a member has a direct or indirect interest in a matter being considered, or about to be considered, by the theatre company, the member must disclose the nature of the interest to a meeting of the theatre company as soon as practicable after the relevant facts come to the member’s knowledge.

Maximum penalty—100 penalty units.

‘(2) The disclosure must be recorded in the theatre company’s minutes.

‘Voting by interested member

‘22.(1) A member who has a material personal interest in a matter that is being considered by the theatre company must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution under subsection (2) (a “**related resolution**”) in relation to the matter (whether in relation to the member or another member); or
- (c) be present while the matter, or a related resolution, is being considered by the theatre company; or
- (d) otherwise take part in any decision of the theatre company in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

‘(2) Subsection (1) does not apply to the matter if the theatre company has at any time passed a resolution that—

- (a) specifies the member, the interest and the matter; and
- (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or

voting on the matter.

‘(3) If, because of this section, a member is not present at a meeting of the theatre company for considering or deciding a matter, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the matter at the meeting.

‘Delegation by theatre company

‘23. The theatre company may, by resolution, delegate its powers to—

- (a) a member; or
- (b) a committee of members; or
- (c) the director; or
- (d) an appropriately qualified employee of the theatre company; or
- (e) a committee of the theatre company.²¹

‘Division 5—Director and staff

‘Director

‘24.(1) The director of the theatre company is to be appointed by the Governor in Council on the theatre company’s recommendation.

‘(2) The director holds office on the conditions not provided for by this Act that are decided by the theatre company.

‘Duties of director

‘24A. The director is, under the members, to manage the theatre company.

‘Director to attend theatre company meetings

‘24B.(1) This section applies if the director is not a member.

²¹ Section 25 deals with the establishment of committees of the theatre company.

‘(2) The director must attend all meetings of the theatre company unless excused or precluded by the company.

‘Things done by director

‘24C. Anything done in the name of, or for, the theatre company by the director is taken to have been done by the theatre company.

‘Delegation by director

‘24D.(1) The director may delegate the director’s powers (including a power delegated to the director by the theatre company) to an appropriately qualified employee of the theatre company.

‘(2) Subsection (1) has effect subject to any directions by the theatre company.

‘Employees

‘24E.(1) The theatre company may employ the persons it considers necessary to perform its functions.

‘(2) Subject to any relevant award or industrial agreement, the theatre company may decide the employees’ terms of employment.

‘(3) The employees are to be employed under this Act and not the *Public Service Act 1996*.

‘Superannuation schemes

‘24F. The theatre company may—

- (a) establish and maintain, or amend, superannuation schemes; or
- (b) join in establishing and maintaining, or amending, superannuation schemes; or
- (c) take part in superannuation schemes.

‘Division 6—Committees

‘Committees

‘25.(1) The theatre company may establish committees of the company.

‘(2) A committee may exercise the powers delegated to it by the company under section 23.²²

‘(3) A committee is subject to the directions of the theatre company in exercising the powers.

‘(4) A person may be appointed to a committee whether or not the person is a member of the theatre company.

‘(5) In appointing a person to a committee, regard must be had to the person’s ability to take part in the exercise of the powers delegated to the committee.

‘(6) A committee may be established for a rural or other area.

‘PART 3—FINANCIAL PROVISIONS’.

Replacement of ss 28–31

69. Sections 28 to 31—

omit, insert—

‘PART 4—PLANNING

‘Division 1—Preliminary

‘How pt 4 applies if offices of Minister and Treasurer are held by the 1 person

‘28.(1) This section applies if, under a provision of this part, a thing is

²² Section 23 (Delegation by theatre company)

required to be done by or in relation to the Minister and the Treasurer and the Minister is the Treasurer.

‘(2) The provision is satisfied if the thing is done by or in relation to the Minister.

‘Part additional to standard

‘29.(1) This part is additional to and does not derogate from the standard.

‘(2) However, if there is an inconsistency between this part and the standard, this part prevails to the extent of the inconsistency.

‘(3) Also, if something is required to be done under this part and the same thing, or something to the same effect, is required to be done under the standard, compliance with this part is sufficient compliance with the standard.

‘Division 2—Strategic and operational plans for theatre company

‘Draft strategic and operational plans

‘30.(1) The theatre company must prepare and submit to the Minister for the Minister’s agreement, draft strategic and operational plans for the theatre company not later than 4 months before the start of each financial year.

‘(2) The theatre company must give copies of the draft plans to the Treasurer at the same time as it gives the plans to the Minister.

‘(3) The draft plans must—

- (a) be in the form approved by the Minister; and
- (b) provide for the things that a strategic plan and an operational plan for the theatre company must provide for under the standard or this part; and
- (c) be accompanied by—
 - (i) a statement of resource implications, and major policy changes, resulting from the proposed plan; and
 - (ii) any budget documents the theatre company has prepared for the State’s funding of the company.

‘(4) The theatre company and the Minister must try to reach agreement on the draft plans as soon as possible and in any event not later than 1 month before the start of the financial year.

‘Special procedures for draft strategic and operational plans

‘31.(1) The Minister may return the draft strategic and operational plans to the theatre company and ask it—

- (a) to consider, or further consider, anything and deal with the thing in the draft plans; and
- (b) to revise the draft plans in the light of its consideration or further consideration.

‘(2) The theatre company must comply with the request as a matter of urgency but subsection (1) does not require the company to amend the draft plans.

‘(3) If the draft plans have not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by written notice, direct the theatre company—

- (a) to take specified steps in relation to the draft plans or either of them; or
- (b) to make specified modifications of the draft plans or either of them.

‘(4) The theatre company must immediately comply with the direction and include a copy of the direction in the plans, or the plan concerned.

‘(5) The Minister may act under subsection (1) or (3) for a thing having resource implications for the theatre company that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the implications.

‘Strategic and operational plans on agreement

‘31A.(1) When the draft strategic and operational plans have been agreed to in writing by the Minister, they become the theatre company’s strategic and operational plans for the relevant financial year.

‘(2) However, the Minister must not agree to the plans for subsection (1)

until Parliament appropriates amounts for the department for the relevant financial year.

‘Strategic and operational plans pending agreement

‘**31B.(1)** This section applies if the Minister and the theatre company have not agreed to draft strategic and operational plans before the start of the relevant financial year.

‘(2) The draft plans submitted, or last submitted, by the theatre company to the Minister before the start of the financial year, with any modifications made by the company, whether before or after that time, at the direction of the Minister, are taken to be the company’s strategic and operational plans.

‘(3) Subsection (2) applies until draft strategic and operational plans become the company’s strategic and operational plans under section 31A.

‘Modifications of strategic and operational plans

‘**31C.(1)** The theatre company may modify its strategic or operational plan only with the written agreement of the Minister.

‘(2) The Minister may, by written notice, direct the company to modify its strategic or operational plan.

‘(3) The Minister may act under subsection (1) or (2) for a modification having resource implications for the theatre company that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the modification.

‘State’s agreed triennial funding

‘**31D.** The theatre company’s strategic plan must include the State’s agreed funding proposals for the company for the period covered by the plan or, if the period is more than 3 years, the first 3 years.

‘Elements of operational plans

‘**31E.** The theatre company’s operational plan must include the following—

- (a) targets for, and ways of measuring, outputs the company intends to supply;
- (b) identification of the outputs that are not in the company's commercial interests to supply;
- (c) identification of the outputs intended to be funded by amounts appropriated by Parliament for the department, or by other grants to the company;
- (d) identification of any outputs intended to be funded from the company's commercial and fundraising activities;
- (e) an outline of the nature and scope of activities, including commercial and fundraising activities, the company proposes to undertake;
- (f) an outline of the major investments and borrowings the company intends to make;
- (g) an outline of the company's risk management policies and procedures;
- (h) an outline of the main undertakings proposed by the company.

'Information systems and physical assets strategic plans

'31F. The theatre company's information systems and physical assets strategic plans under the standard must be included in the company's strategic plan.

'PART 5—ACCOUNTABILITY MATTERS

'Theatre company to keep Minister informed

'31G.(1) The theatre company must—

- (a) keep the Minister reasonably informed of the company's operations including its financial and operational performance and the achievement of its goals; and

- (b) give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the company's opinion may prevent, or significantly affect, achievement of its goals under its strategic plan or significantly affect its performance in delivering the outputs under its operational plan—immediately inform the Minister of the matters and its opinion about them.

‘(2) Subsection (1) does not limit the matters of which the company is required to keep the Minister informed, or limit the reports or information that the company is required, or may be required, to give to the Minister, by another Act.

‘Monitoring and assessment of theatre company

‘**31H.(1)** The Minister may ask an appropriately qualified officer of the department or another appropriately qualified person to investigate, and report to the Minister on, any matter relating to the theatre company.

‘(2) The person may give written directions to the theatre company for the investigation.

‘(3) Without limiting subsection (2), the person may direct the theatre company—

- (a) to give to the person any information about the company that the person considers necessary or desirable in connection with the investigation; and
- (b) to permit other persons authorised by the person to have access to specified records and other documents about the company that the person considers necessary or desirable in connection with the investigation; and
- (c) to take steps the person considers necessary or desirable for the investigation.

‘(4) The theatre company must ensure that any direction given to it under this section is complied with.

‘(5) Before reporting on the investigation to the Minister, the person must consult with the theatre company about the report.

‘PART 6—REPORTING

‘Annual report

‘31I. The theatre company’s annual report under the *Financial Administration and Audit Act 1977* must include—

- (a) a summary of the operational plan for the relevant financial year; and
- (b) a summary of any modifications of the operational plan during the relevant financial year; and
- (c) particulars of any directions given to the company by the Minister that relate to the relevant financial year; and
- (d) particulars of the impact on the financial position of the company of any modifications of the operational plan, and any directions given to the company by the Minister, that relate to the relevant financial year.

‘PART 7—MISCELLANEOUS PROVISIONS

‘Delegation by Minister

‘31J.(1) The Minister may delegate the Minister’s powers under this Act to an appropriately qualified officer of the department.

‘(2) However, the Minister may not delegate any of the following powers—

- (a) the power to give the theatre company a function for section 5(1)(j);²³
- (b) the power to direct the theatre company under sections 8, 31(3)

²³ Section 5 (Functions of the theatre company)

and 31C(2);²⁴

- (c) the power to agree in writing to, and agree in writing to modifications of, the theatre company's strategic and operational plans;
- (d) the power to ask a person to investigate and report under section 31H(1).²⁵

'Protection from liability of members

'31K.(1) A member is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

'(2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the theatre company.

'(3) This section is subject to section 31L.

'(4) In this section—

"member" includes a person appointed to a committee of the theatre company.

'Illegal borrowing

'31L.(1) Subsection (2) applies if the theatre company borrows an amount that it is not authorised to borrow under an Act.

'(2) The members who consented to the borrowing are jointly and severally liable to repay the amount, and any interest on it, to the person from whom it was borrowed and the person may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

'(3) Subsection (4) applies if an amount is appropriated from the theatre company's moneys to repay an amount mentioned in subsection (1) or interest on the amount.

'(4) The members who consented to the appropriation are jointly and

²⁴ Sections 8 (Directions by Minister), 31 (Special procedures for draft strategic and operational plans) and 31C (Modifications of strategic and operational plans)

²⁵ Section 31H (Monitoring and assessment of theatre company)

severally liable to refund the amount, together with interest on the amount at a rate decided by the Treasurer, and the Treasurer may recover the amount and interest by action as for a debt in a court of competent jurisdiction.

‘(5) If the Treasurer brings an action under subsection (4)—

- (a) the Treasurer is entitled to costs as between solicitor and client; and
- (b) any amount recovered must be paid to the theatre company.

‘(6) Subsection (2) does not apply to a member if, at the time the member consented to the borrowing, the member believed on grounds that were reasonable in all the circumstances that the theatre company was authorised under an Act to borrow the amount.

‘(7) Subsection (4) does not apply to a member if—

- (a) subsection (2) does not apply to the member because of subsection (6); or
- (b) the member did not consent to the borrowing.

‘Application of rule against perpetuities

‘**31M.** For the application of the rule against perpetuities to gifts to the theatre company, the company’s purposes are taken to be charitable.

‘Exemption from stamp duty

‘**31N.** Stamp duty is not payable for the transfer of any property to the theatre company.

‘Building etc. occupied by theatre company taken to be public place

‘**31O.(1)** This section applies for any Act conferring or imposing on a police officer powers or functions in respect of a public place or providing for offences committed in a public place.

‘(2) A building or another place occupied by the theatre company is taken to be a public place.

‘(3) Subsection (2) must not be construed to prevent or limit the

imposition by the theatre company of conditions of entry for the building or other place.

‘Theatre company’s seal

‘31P.(1) The theatre company’s seal is to be kept in the custody directed by the theatre company and may be used only as authorised by the company.

‘(2) The attaching of the seal to a document must be witnessed by—

- (a) 2 or more members; or
- (b) at least 1 member and the director; or
- (c) a member or the director, and 1 or more other persons authorised by the theatre company.

‘Authentication of documents

‘31Q. A document made by the theatre company (other than a document required by law to be sealed) is sufficiently authenticated if it is signed by—

- (a) the chairperson; or
- (b) the director; or
- (c) a person authorised to sign the document by—
 - (i) resolution of the company; or
 - (ii) direction of the director.

‘Reward for information

‘31R.(1) The theatre company may offer and pay a reward to a person who gives the company information about an offence it believes or suspects is committed in relation to its property or property in its possession.

‘(2) If a court finds a person guilty of the offence and the theatre company has paid, or agreed to pay, the reward for information about the offence, the court may order the person to pay to the company the amount of the reward.

‘(3) The amount is a debt owing by the person to the theatre company.

‘(4) Subsection (2)—

- (a) applies whether or not a conviction is recorded; and
- (b) does not limit the court’s jurisdiction to impose a penalty or make another order for the offence.

‘Proceedings for offences

‘31S. A proceeding for an offence under this Act may be instituted summarily under the *Justices Act 1886*.

‘Description of property in proceeding

‘31T. In any proceeding taken for an offence committed in relation to property, or property in the possession, of the theatre company and in which it is material to prove ownership of the property, it is enough to allege the theatre company owns the property.’.

Omission of s 32 (By-law making power)

70. Section 32—

omit.

Insertion of new pt 8

71. After section 34—

insert—

‘PART 8—SAVING AND TRANSITIONAL

‘Definition

‘35. In this part—

“pre-amended Act” means this Act as in force before the commencement of this section.

‘Members continue in office

‘36. A person who, immediately before the commencement of this section, was a member of the theatre company under the pre-amended Act continues in office, subject to this Act, as a member in terms of the member’s appointment under the pre-amended Act.

‘Chairperson and deputy chairperson taken to be appointed

‘37.(1) The member who, immediately before the commencement of this section, was the chairperson of the board of the theatre company under the pre-amended Act is taken to have been appointed as chairperson of the theatre company and holds office in terms of the member’s appointment under the pre-amended Act.

‘(2) The member who, immediately before the commencement of this section, was the deputy chairperson of the board of the theatre company under the pre-amended Act is taken to have been appointed as deputy chairperson of the theatre company and holds office in terms of the member’s appointment as deputy chairperson under the pre-amended Act.

‘Director and employees

‘38.(1) The person who, immediately before the commencement of this section, was employed as the chief executive of the board of the theatre company is taken to be the director and holds office as director in terms of the person’s employment as chief executive.

‘(2) A person who, immediately before the commencement of this section, was an employee under the pre-amended Act is taken to be an employee of the theatre company in terms of the person’s employment under the pre-amended Act.

‘Numbering and renumbering of Act

‘39. In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.

‘Expiry of pt 8

‘40. This part expires on 22 January 2000.’.

**PART 7—REPEAL OF QUEENSLAND CULTURAL
CENTRE TRUST ACT 1976***Division 1—Repeal***Repeal**

72. The *Queensland Cultural Centre Trust Act 1976* is repealed.

*Division 2—Validating, saving and transitional provisions**Subdivision 1—Interpretation***Definition**

73. In this division—

“**repealed Act**” means the *Queensland Cultural Centre Trust Act 1976*.

Terms used in repealed Act

74. Unless the contrary intention appears, words and expressions used in the repealed Act have the same respective meanings in this division.

*Subdivision 2—Validation of certain leases***Definition**

75. In this subdivision—

“lease” means a lease granted before the commencement of this subdivision by the trust of land, buildings or other improvements comprised in the Queensland Cultural Centre to—

- (a) Library Board of Queensland for a term of 75 years; or
- (b) Queensland Art Gallery Board of Trustees for a term of 75 years; or
- (c) Queensland Museum Board of Trustees for a term of 75 years; or
- (d) Queensland Performing Arts Trust for a term of 75 years; or
- (e) Royal Queensland Theatre Company for a term of 30 years.

Validation

76.(1) The lease is taken to be, and to have at all times been, valid and effective in law.

(2) Without limiting subsection (1), the lease—

- (a) is taken to contain, and at all times to have contained, a covenant that the lessor may terminate the lease on the failure of the lessee to observe or perform any covenant or condition of the lease that is expressed to be binding on the lessee; and
- (b) is taken to have been, immediately before the lease’s commencement, endorsed with the approval of the Minister administering the *Land Act 1962* at that time.

Leases taken to contain certain terms

77.(1) This section applies in relation to the demised premises to which the lease relates and has effect immediately before the repeal of the *Queensland Cultural Centre Trust Act 1976*.

(2) The lease is taken to contain provisions to the effect of the following—

- (a) the lessee releases and indemnifies the trust in relation to any action or proceeding to the extent it relates to land or an interior part, other than an interior structural part, of a building;
- (b) the trust releases and indemnifies the lessee in relation to any

action or proceeding to the extent it relates to the exterior of a building or to an interior structural part of a building;

- (c) to the extent that the trust or the lessee indemnifies the other in relation to an action or proceeding mentioned in paragraph (a) or (b), the trust or lessee is taken not to be the occupier of the land or part of the building concerned.

(3) In this section—

“**building**” includes part of a building.

“**demised premises**”—

- (a) for a lease granted to an entity other than Queensland Performing Arts Trust—has the same meaning as in the lease;
- (b) for a lease granted to Queensland Performing Arts Trust—has the same meaning as the term “areas” has in the lease.

Registration of leases

78.(1) This section applies if the lease document is lodged for registration under the *Land Act 1994*.

(2) The person having the function of registering documents transferring or creating interests in land under that Act must register the document.

(3) No fee is payable for the registration.

Subdivision 3—Validation of certain licence agreements

Definition

79. In this subdivision—

“**licence**” means—

- (a) a licence agreement expiring on 30 June 1998 entered into before the commencement of this subdivision between Berlasco Pty Ltd (ACN 010 041 040) and Queensland Performing Arts Trust; or
- (b) a licence agreement entered into before the commencement of this subdivision for a term of 5 years between Advanced Food

Systems International Ltd (ACN 004 292 951) and—

- (i) Library Board of Queensland; or
- (ii) Queensland Art Gallery Board of Trustees; or
- (iii) Queensland Museum Board of Trustees.

Validation

80.(1) The licence is taken to be, and to have at all times been, validly entered into.

(2) Without limiting subsection (1), subsection (3) applies to the extent the licence permits Berlasco Pty Ltd or Advanced Food Systems International Ltd to occupy a part of the centre.

(3) Immediately before the licence was entered into, the prior consent in writing of the Minister administering the *Land Act 1962* at that time is taken to have been given to the occupation.

Subdivision 4—Dissolution of trust

Dissolution of Queensland Cultural Centre Trust etc.

81. The trust is dissolved and the members and director of the trust go out of office.

State is successor in law of trust

82.(1) The State is the successor in law of the trust.

(2) The following provisions of this subdivision do not limit subsection (1).

Trust's assets and liabilities

83.(1) The trust's assets become the State's assets.

(2) The trust's liabilities are assumed by the State.

(3) In this section—

“assets” of the trust include the trust’s interest in the centre.

Pending legal proceedings by or against trust

84. A legal proceeding by or against the trust that is not finalised before the commencement may be continued or finished by or against the State.

Instruments

85.(1) This section applies to an instrument (including a statutory instrument) in existence immediately before the commencement of this subdivision.

(2) An instrument applying to the trust is to apply to the State in place of the trust.

(3) Without limiting subsection (2) the following provisions apply—

- (a) an instrument to which, immediately before commencement, the trust is a party is taken to be an instrument to which the State is a party;
- (b) an instrument given to, by or in favour of the trust is taken to be an instrument given to, by or in favour of the State;
- (c) an instrument in which a reference is made to the trust (including, for example, an instrument to which the trust is a party) is taken to be an instrument in which the reference is made to the State;
- (d) an instrument under which money is or may become payable, or other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the trust is taken to be an instrument under which the money is or may become payable, or the other property is to be, or may become liable to be, transferred, conveyed or assigned to or by the State.

Testamentary and other instruments that have not taken effect

86.(1) A reference in an instrument to the trust as a beneficiary or trustee of any property that has not taken effect before the commencement of this

subdivision is taken to be a reference to the State.

(2) It is immaterial whether the instrument is executed before or after the commencement.

Application of rule against perpetuities to certain property

87.(1) This section applies—

- (a) if—
 - (i) immediately before the commencement of this subdivision, the Queensland Cultural Centre Trust holds any property under a trust; and
 - (ii) on the commencement, the property becomes the State's property under this subdivision; or
- (b) if the State holds property under a trust because of section 86.

(2) For the application of the rule against perpetuities to the property, the purposes of the State are taken to be charitable purposes.

Effect of things done under this subdivision

88.(1) Nothing done under this subdivision—

- (a) places the trust or the State in breach of a contract or confidence or otherwise makes it guilty of a civil wrong; or
- (b) makes the trust or State in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment or transfer of any right or liability or the disclosure of any information; or
- (c) is taken to fulfil a condition—
 - (i) that allows a person to terminate an instrument or obligation or modify the operation or effect of an instrument or obligation; or
 - (ii) that requires any money to be paid before its stated maturity; or
- (d) releases a surety or other obligee (in whole or part) from an

obligation.

(2) If the advice or consent of a person would be necessary under an instrument to give effect to this subdivision, the advice is taken to have been obtained or the consent is taken to have been given.

Subdivision 5—Miscellaneous

Application of Acts Interpretation Act 1954, s 20A

89. This division is a law to which the *Acts Interpretation Act 1954*, section 20A applies.²⁶

PART 8—REPEAL OF THIS ACT

Repeal

90. This Act is repealed on 31 December 1998.

²⁶ *Acts Interpretation Act 1954*, section 20A (Repeal does not end saving, transitional or validating effect etc.)

SCHEDULE 1**MINOR AMENDMENTS OF LIBRARIES AND
ARCHIVES ACT 1988**

section 3

1. Before section 19—*insert—**‘Division 1A—State librarian and staff’.***2. Section 19, heading, ‘Director and’—***omit.***3. Section 19(1), ‘Director and’—***omit.***4. Section 19(1), ‘(the “director”)’—***omit.***5. Section 19(2)—***omit.***6. Section 20—***omit.*

SCHEDULE 1 (continued)

7. Part 3, division 2, heading—

omit, insert—

‘Division 2—Functions’.

8. Section 30(2), ‘discharge the functions, exercise the powers and perform the duties’—

omit, insert—

‘perform the functions and exercise the powers’.

9. Section 33(1), ‘discharge a function, exercise a power or perform a duty’—

omit, insert—

‘perform a function or exercise a power’.

10. Section 51(2)(b), ‘director and’—

omit.

11. Section 65(1), ‘defined in section 62’—

omit, insert—

‘against section 62’.

12. Section 65(2)—

omit, insert—

‘(2) The person must comply with the order, unless the person has a reasonable excuse for not complying with it.

Maximum penalty for subsection (2)—20 penalty units.’.

SCHEDULE 1 (continued)

13. Section 67, ‘director and’—*omit.***14. Section 69(1), ‘or the possession of the State Library’—***omit.***15. Section 71(2), ‘or the State Library’—***omit.***16. Section 71(5)—***omit.***17. Section 72—***omit.*

SCHEDULE 2**MINOR AMENDMENTS OF QUEENSLAND ART
GALLERY ACT 1987**

section 26

1. Before section 18—*insert—**‘Division 1A—Director and staff’.***2. Part 2, division 2, heading—***omit, insert—**‘Division 2—Functions’.***3. Section 28(1), ‘trustees’—***omit, insert—**‘members’.***4. Section 31(1), ‘trustees’—***omit, insert—**‘members’.***5. Section 31(2), ‘trustee’—***omit, insert—**‘member’.*

SCHEDULE 3**MINOR AMENDMENTS OF QUEENSLAND
MUSEUM ACT 1970**

section 41

1. Part 2, heading—*omit, insert—***‘PART 2—BOARD OF THE QUEENSLAND
MUSEUM’.****2. Part 2, division 2, heading—***omit, insert—***‘Division 2—Functions’.****3. Section 24A(2), ‘such powers’ to ‘prescribed’—***omit, insert—*

‘the functions decided by the board’.

4. Sections 25 and 26—*omit.***5. Part 4, heading—***omit, insert—***‘PART 4—MISCELLANEOUS’.**

SCHEDULE 3 (continued)

6. Sections 42 and 43—*omit.*

SCHEDULE 4**MINOR AMENDMENTS OF QUEENSLAND
PERFORMING ARTS TRUST ACT 1977**

section 51

1. Part 2, division 2, heading—*omit, insert—**‘Division 2—Functions’.***2. Section 16, heading, ‘Objects’—***omit, insert—**‘Functions’.***3. Section 16, ‘objects’—***omit, insert—**‘functions’.***4. Section 16(a), ‘as defined in the *Queensland Cultural Centre Trust Act 1976*’—***omit.***5. Section 21(1), ‘The quorum’—***omit, insert—**‘A quorum’.*

SCHEDULE 4 (continued)

6. Section 21(1), ‘as members’—

omit.

7. Section 21(2), from ‘shall have’—

omit, insert—

‘may perform the functions and exercise the powers of the trust.’.

8. Section 23(1), ‘exercise or perform a power, authority, function or duty’—

omit, insert—

‘perform a function or exercise a power’.

9. Section 23(3), ‘chairperson’—

omit, insert—

‘person presiding at a meeting’.

10. Part 3, division 1, heading—

omit.

11. Sections 30 to 33 and 36 to 51—

omit.

12. Part 4, heading, ‘general’—

omit, insert—

‘miscellaneous’.

SCHEDULE 4 (continued)

13. Sections 61, 62 and 65(2)—*omit.*

SCHEDULE 5**MINOR AMENDMENTS OF ROYAL QUEENSLAND
THEATRE COMPANY ACT 1970**

section 65

1. Before section 1—*insert—***‘PART 1—PRELIMINARY’.****2. Section 5, heading, ‘Objects’—***omit, insert—*

‘Functions’.

3. Section 5, ‘The objects’—*omit, insert—*

‘The functions’.

4. Section 5(c), ‘, opera, ballet, music’—*omit.***5. Section 5(d), from ‘, opera, ballet’—***omit, insert—*

‘and other forms and types of theatre and entertainment in places determined by the theatre company;’.