

ARTS LEGISLATION AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Bill

The objectives of the Bill are:

- to apply the three key principles of clarity of objectives, management autonomy and authority and strict accountability for performance to:
 - . Library Board of Queensland;
 - . Queensland Art Gallery Board of Trustees;
 - . Queensland Museum Board of Trustees, which will have its name changed to the Board of the Queensland Museum;
 - . Queensland Performing Arts Trust; and
 - . Royal Queensland Theatre Company;
- to abolish the statutory body known as the Queensland Cultural Centre Trust (QCCT) which will involve the repeal of the *Queensland Cultural Centre Trust Act 1976*; and
- to modernise the following Acts (referred to in these Explanatory Notes as the continuing Acts):
 - . *Libraries and Archives Act 1988*;
 - . *Queensland Art Gallery Act 1987*;
 - . *Queensland Museum Act 1970*;
 - . *Queensland Performing Arts Trust Act 1977*; and
 - . *Royal Queensland Theatre Company Act 1970*.

Reasons for the Bill

In March 1997, Cabinet endorsed recommendations for the refocussing of The Arts portfolio. Most of the recommendations have been, or are being, implemented administratively. However, some of the recommendations can only be implemented legislatively. The relevant recommendations are:

- the application of the key principles of clarity of objectives, management autonomy and authority and strict accountability for performance; and
- the abolition of QCCT.

The continuing Acts contain provisions which are currently outdated and inflexible and which are not drafted in accordance with modern drafting protocols. The opportunity has been taken to modernise the continuing Acts.

Achieving the objectives

The application of the three key principles of clarity of objectives, management autonomy and authority and strict accountability for performance are being achieved in the Bill by:

- removing from the continuing Acts provisions that are prescriptive of day to day operational matters that are for management to determine;
- removing any statutory imperative that there be a departmental nominee on the boards of the statutory bodies;
- providing the statutory bodies with all of the powers of an individual subject to their functions and any constraints imposed expressly in legislation, the statutory bodies' strategic or operational plans or by written Ministerial direction; and
- establishing a hybrid regime for strategic and operational planning and performance monitoring using the *Financial Management Standard 1997* as the template. Details of the variations to the *Financial Management Standard 1997* follow.

. The inextricable link between planning and funding is

reinforced by requiring stand-alone planning and budgetary documentation to be treated as one document.

- . The intention that the strategic and operational plans constitute performance agreements between the statutory bodies and the Minister is achieved by requiring formal agreement of the plans. Agreed triennial funding proposals will be incorporated into the strategic plan, a document with a three year focus reviewable annually. As the plans will include funding documentation, once the plans have been formally agreed with the Minister the statutory bodies can be confident that they will receive the amount of agreed funding for the relevant financial year.
- . The process for consulting on, and agreeing, the draft plans is clearly structured. The objective is to ensure that the draft plans submitted by the statutory bodies are only altered with the bodies' agreement or pursuant to a written Ministerial direction. Modifications to approved plans are also to be made only with the bodies' agreement or pursuant to written Ministerial direction. This ensures transparency for accountability purposes.
- . Departmental processes, and the role of The Arts Office in performance monitoring, are recognised.

The abolition of QCCT is being achieved by the repeal of the *Queensland Cultural Centre Trust Act 1976*.

The modernisation of the continuing Acts is being achieved by making amendments to the Acts. Substantial amendments to the Acts have been required in order to achieve this objective.

Alternatives to the Bill

The implementation of the objectives can only be achieved legislatively.

Although the continuing Acts will contain numerous identical provisions, it is appropriate that each of the statutory bodies continue to have their own distinct constituent legislation. This is consistent with the approach adopted in other States.

Administrative cost to Government

A planning, performance monitoring and reporting regime already applies to the statutory bodies by virtue of the *Financial Management Standard 1997*. The variations to the regime proposed in the Bill are aimed at providing a more structured approach to give the statutory bodies, The Arts Office and the Minister greater certainty as to their respective roles and obligations under the regime. The variations to the regime will not result in greater administrative costs to Government.

Consistency with fundamental legislative principles

The Bill provides for the omission from the continuing Acts of provisions that breach fundamental legislative principles. The Bill also modernises some existing provisions and incorporates new provisions which, because of their subject matter, appear to breach the fundamental legislative principles. However, the provisions have been drafted with sufficient regard to individuals' rights and liberties and, accordingly, do not breach the fundamental legislative principles.

Consultation

Extensive community consultation has taken place since the public announcement of the refocussing of The Arts portfolio was made in March 1997. Meetings have taken place with members of The Arts community locally and in rural areas.

There has also been ongoing consultation with the statutory bodies, including their staff, and with The Arts Office.

Consultation has also been undertaken with:

- the Department of Local Government and Planning;
- the Department of Natural Resources;
- the Department of Police;
- the Department of Public Works and Housing;
- the Department of Tourism Small Business and Industry;
- the State Public Services Federation of Queensland; and

- Treasury Department, including the Government Superannuation Office.

NOTES ON CLAUSES

As part of the process of modernising the continuing Acts, efforts have been made to standardise as far as possible the sequence in which the sections appear in each of the continuing Acts. This has been achieved in many cases by omitting sections where they currently appear and inserting sections covering the same subject matter, redrafted in accordance with modern drafting protocols, in another part of the Act. Accordingly, sections replacing omitted sections do not necessarily cover the same subject matter.

PART 1 - PRELIMINARY

Clause 1 cites the short title of this Act.

Clause 2 sets out the date for commencement of certain provisions of the Act.

PART 2 - AMENDMENT OF *LIBRARIES AND ARCHIVES ACT 1988*

Clause 3 states that Part 2 and Schedule 1 amend the *Libraries and Archives Act 1988*.

Clause 4 omits the definitions in section 5 of “appointed member”, “director” and “library facility” as these definitions will become redundant. The clause also replaces the existing definition of “board” and inserts new definitions of “appropriately qualified”, “chairperson”, “deputy chairperson”, “library material”, “member”, “operational plan”, “Parliamentary library”, “premises”, “standard”, “State librarian”, “State Library” and “strategic plan”.

The definitions of “operational plan” and “strategic plan” reflect the link between the *Financial Management Standard 1997* and the *Libraries and Archives Act 1988* in terms of planning by providing that the plans are developed under both pieces of legislation.

Clause 5 replaces section 6 so that it is drafted in accordance with modern drafting protocols. It provides that the Act binds the State.

Clause 6 omits existing Part 2 which comprises only one section that preserves the “organisation” known as the Public Library of Queensland as the State Library of Queensland. The provision is a transitional provision whose effect is continued notwithstanding its repeal by virtue of the *Acts Interpretation Act 1954*. No replacement provision is necessary as the concept of an “organisation” is not recognised at law. The State Library is not a separate legal entity but rather a location.

Clause 7 omits sections 8 to 18 and replaces the sections with new sections 8 to 16 which cover similar subject matter.

Section 8 continues in existence the legal entity known as the Library Board of Queensland which is defined in section 5 as the “board”.

Section 9 continues the board as a body corporate and, as such, a separate legal entity with the legal characteristics of a body corporate, namely, perpetual succession, a common seal and the ability to sue and be sued.

Section 10 continues the board as a representative of the State.

Section 11 outlines the composition of the board. The board is to be comprised of the number of members appointed by the Governor in Council under the *Libraries and Archives Act 1988*. Members are not appointed under the *Public Service Act 1996*. In appointing the members, subsection (2) requires regard to be had to the person’s ability to contribute to the board’s performance and the implementation of its strategic and operational plans.

Section 12 sets out the role of the members in relation to the board. The members' role is effectively that of the governing body of the board.

Section 13 prohibits the appointment as members of persons who are ineligible to manage corporations under the *Corporations Law*.

Section 14 requires the Governor in Council to appoint a chairperson and for the members to elect a deputy chairperson. The chairperson and deputy chairperson are able to resign by notice to the Minister without resigning as members.

Section 15 prescribes a maximum term for membership of 5 years. A person ceases to be a member if the person resigns, becomes ineligible to manage corporations under the *Corporations Law* or the Governor in Council terminates the appointment. The Governor in Council's ability to terminate appointments is unfettered so that the principle of strict accountability for performance can be implemented.

Section 16 provides that the terms of members' appointments, including entitlements to benefits, are those determined by the Governor in Council.

Clause 8 amends section 19 so that the appointment of the State librarian by the Governor in Council is made upon the recommendation of, and upon conditions not provided for in the Act that are decided by, the board.

Clause 9 inserts new sections 19AA to 19AD.

Section 19AA states that the role of the State librarian is to manage the body corporate, the board, under the board's governing body, the members, who have ultimate responsibility for managing the board.

Section 19AB ensures that the State librarian attends all meetings of the board, unless excused or precluded by the board, in circumstances where the State librarian is not a member.

Section 19AC provides that things done by the State librarian in the name of, or for, the board are taken to have been done by the board.

Section 19AD gives the State librarian the power to delegate to appropriately qualified staff of the board, whether they be appointed under the *Libraries and Archives Act 1988* or under the *Public Service Act 1996*.

Clause 10 replaces subsection (1) of section 19A. At present, the subsection states that the State librarian (otherwise currently known as the director) employs persons. The employer is in fact the board. The new

subsection (1) accurately reflects the board as employer.

Clause 11 inserts new section 19B which gives the board the express ability to be involved in superannuation schemes. This provision will enable the board to continue to take part in the scheme in which it currently takes part.

Clause 12 replaces subsections (1)(j) and (k) and inserts new subsection (1)(l) and (2) in section 21 which sets out the functions of the board. The existing subsection (1)(j) is arguably a Henry VIII clause and subsection (1)(k) appears to be a statement of a power rather than a function.

Subsection (1)(j) gives the board functions conferred under another Act.

Subsection (1)(k) gives the board functions incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions listed in the earlier subsections of section 21.

Subsection (1)(l) enables the Minister to give the board functions of the type given in subsection (1)(k). This subsection is intended to enable the Minister to clarify what functions the board should be performing under subsection (1)(k). Subsection (2) requires the Minister to consult with the board before giving it a function under subsection (1)(l).

Clause 13 replaces sections 22 to 28 with new Division 2A (Legal capacities and powers).

Section 22 outlines the objects of Division 2A to include the abolition of the doctrine of ultra vires and ensuring that third parties are protected in their dealings with the board. An act is ultra vires if it exceeds the authority conferred by law and is invalid.

Section 23 subsection (1) gives the board all of the powers of an individual in the performance of its functions. Subsection (1) contains some limited examples of the powers of an individual. Subsection (2) states that, in addition to the powers of an individual conferred under subsection (1), the board has powers expressly given to it under the *Libraries and Archives Act 1988* or another Act. An example of a power given under another Act is the power to invest under the *Statutory Bodies Financial Arrangements Act 1982* which is not covered by the board's powers of an individual. Subsection (3) enables the board to exercise its

powers anywhere.

Section 24 effectively replaces and narrows existing section 28 and gives the Minister a general power to direct the board. The Minister is required to exercise the power in writing, ensuring transparency in any Ministerial control of the board.

Section 25 subsections (1) and (2) set out how the board's wide powers are restricted. The powers are restricted by any express restrictions contained in the *Libraries and Archives Act 1988*, another Act, any relevant strategic or operational plan or any written Ministerial directions. Subsections (3) to (7) set out the position of the board, the board's officers and third parties if the board exercises a power contrary to a restriction or otherwise than in pursuance of its functions. The board, and any officer involved, are taken to have contravened the section but this, of itself, does not mean the board or officer are guilty of an offence. The exercise of the power is not necessarily invalid.

Section 26 sets out the assumptions that a person having dealings with, or a person who has acquired or purports to have acquired title to property from, the board is entitled to make.

Section 27 restricts the board's power to contract with a third party to establish a branch of the State Library. The power can only be exercised with the approval of the Governor in Council. This restriction appears in existing section 23.

Section 28 restricts the board's power to make a grant or give a subsidy to a local government. The power can only be exercised with the approval of the Minister. This section effectively replaces existing section 27.

Section 28A gives the board the power to sell or dispose of abandoned property. Any sale is required to be by public auction. Notice of the sale is required to be given under section 28B.

The board can otherwise dispose of the abandoned property if it considers, on reasonable grounds, that it is not viable to sell it. The board can destroy abandoned property that is dangerous or unfit for its intended use.

Section 28B requires the board to give notice of a proposed sale of abandoned property.

Section 28C validates any sale or other disposal of abandoned property under section 28A and provides that no stamp duty is payable on the sale or disposal.

Clause 14 omits subsection (2) of section 29. The subject matter (notices of meetings) is a matter for the board to determine.

Clause 15 replaces sections 31 and 32 with new sections 31 and 32 and inserts new sections 32A and 32B.

Section 31 sets out who is to preside at meetings of the members.

Section 32 leaves the matter of when and where members meetings should take place to the board to decide. Subsections (2) and (3) enable the members to conduct meetings using various forms of communication technology.

Section 32A enables the members to pass resolutions without meetings.

Section 32B requires the board to keep minutes of meetings.

Clause 16 replaces sections 34 to 37 with new sections 34 to 36.

Section 34 requires members to disclose, and record in the board's minutes, any direct or indirect interests in matters being considered by the board. A penalty of 100 penalty units is prescribed for contravention of the section.

Section 35 prevents an interested member from voting on certain resolutions. There is a penalty of 100 penalty units for contravention. The members can pass a resolution enabling a member to vote notwithstanding the member's interest in the matter being considered.

Section 36 sets out the board's power to delegate. The persons to whom the board can delegate are set out in the subsections. Staff to whom the board delegates must be appropriately qualified. The board must resolve to delegate its power under the section.

Clause 17 omits Part 3 Division 4. The provisions being omitted deal with financial matters that are matters for the board to determine.

Clause 18 inserts new Parts 3A (comprising sections 38 to 47), 3B and 3C.

Section 38 sets out the way in which the provisions of Part 3A apply if the Minister and the Treasurer are the same person. Anything required to be done by, or in relation to, both is taken to have been done by, or in relation to, both if done only by, or in relation to, the Minister.

Section 39 explains how the *Financial Management Standard 1997* and Part 3A interact. Part 3A prevails to the extent of any inconsistency. If something is required under Part 3A and something similar is required to be done under the *Financial Management Standard 1997*, the thing is taken to have been done for the purposes of both if done under Part 3A.

Section 40 requires draft strategic and operational plans to be submitted to the Minister and copies to be provided to the Treasurer within the set time limits. The requirement that planning and funding documents be linked is set out in subsection (3). There is a requirement to seek to reach agreement on the draft plans.

Section 41 enables the Minister to ask the board to reconsider its draft plans and to give the board written directions in relation to the draft plans within certain time limits. The Minister must consult with the Treasurer where there are resource implications that are likely to require additional State funding.

Section 42 requires formal approval of the plans in writing by the Minister, but only after Parliamentary appropriations have been made. As the plans will contain funding documentation, this ensures the Minister does not agree funding matters until appropriations have been made. Formal approval reinforces the nature of the plans as performance agreements.

Section 43 covers the situation where plans have not been agreed before the start of the relevant financial year. In those circumstances, the draft plans last submitted, as modified by any Ministerial directions, are taken to be the board's plans.

Section 44 enables the plans to be modified only with the written agreement of the Minister or by written Ministerial direction. Modifications that are likely to result in additional State funding must first be approved by the Treasurer.

Section 45 requires the strategic plan to contain the State's agreed triennial funding proposals.

Section 46 sets out matters to be included in the operational plan.

Section 47 requires the board's information systems and physical assets strategic plans to be included in its strategic plan.

Sections 47A and 47B comprise the new Part 3B.

Section 47A requires the board to keep the Minister informed of its operations, give the Minister information required in order to monitor the board's operations and advise the Minister of matters affecting its operations and performance.

Section 47B contains a reserve Ministerial power to instigate an investigation of the operations of the board. The investigator is required to be appropriately qualified. The investigator is given wide powers to direct the board in relation to the investigation.

Section 47C is the only section in new Part 3C. It requires the annual report of the board to contain summarised information regarding the operational plan of the board and of Ministerial directions given during the relevant financial year.

Clause 19 replaces sections 62 and 63 by effectively redrafting them in accordance with modern drafting protocols.

Section 62 requires persons who publish materials in Queensland to give a copy of the materials to the board and the Parliamentary library. A penalty of 20 penalty units is maintained for failure to comply with the requirement.

Section 63 deals with giving receipts for material given to the board or Parliamentary library under section 62.

Clause 20 replaces section 66 by redrafting it in accordance with modern drafting protocols. Section 66 enables the State librarian or Parliamentary librarian to exempt persons from compliance with section 62.

Clause 21 inserts new sections 68 to 68I. Some of these sections are redrafted versions of sections being omitted from other parts of the Act.

Section 68 gives the Minister the power to delegate the Minister's powers under the Act and sets out some important exceptions.

Section 68A protects against civil liability a member acting honestly and without negligence. The liability attaches instead to the board. The protection is subject to section 68B.

Section 68B operates to render personally liable any member who

consents to the board borrowing an amount that it is not authorised to borrow or repaying a borrowed amount that it was not authorised to borrow. There is an exception where the members believe, on grounds that are reasonable in all the circumstances, that the board was authorised to borrow.

Section 68C effectively replaces existing section 43 and provides that the board is a statutory body for the purposes of the *Statutory Bodies Financial Arrangements Act 1982*. The board is also a statutory body for the purposes of the *Financial Administration and Audit Act 1977*.

Section 68D effectively replaces the current section 25(4) and provides that, for the application of the rule against perpetuities to gifts to the board, the board's purposes are charitable.

Section 68E exempts from stamp duty any transfer of property to the board. This puts beyond doubt that neither the board nor a third party transferee of property (including gifts) to the board are liable to pay stamp duty.

Section 68F declares the places comprising the State Library or any branches to be public places. This means that Acts conferring or imposing police powers or functions in respect of a public place or providing for offences committed in a public place apply to the places.

Section 68G seeks to prevent the unauthorised removal of library materials from the board's premises. A person bringing materials or receptacles onto the board's premises must allow an authorised officer or employee of the board to inspect the material or receptacle. Subsections requiring production of identification and exemptions from compliance where there is a reasonable excuse ensure that the section does not breach fundamental legislative principles.

Section 68H sets out how the board's seal can be witnessed on documents that are required to be signed under seal. This effectively replaces existing section 35.

Section 68I sets out how documents that are not required to be signed under seal are to be signed by the board.

Clause 22 amends section 69 so that a court can order a person found guilty of an offence, whether or not a conviction is recorded, to pay the board the amount of any reward the board has paid or contracted to pay for

information relating to the offence.

Clause 23 replaces existing section 70 with a simplified section that accords with modern drafting protocols and practice. It enables proceedings for offences under the Act to be instituted summarily under the *Justices Act 1886*.

Clause 24 replaces section 73 with a simplified section that accords with modern drafting protocols and excludes subject matter from regulations that are internal management matters for the board to determine that need not constitute subordinate legislation or matters that, under the fundamental legislative principles, are inappropriate for subordinate legislation or are adequately covered by the common law or other statute law.

Clause 25 inserts new Part 8 which contains saving and transitional provisions.

Section 74 ensures that all but one of the current members continue in office on the same terms. At present, there are two ex officio members, the State librarian and the nominee of the chief executive. Subsection (3) provides for chief executive's nominee to continue as a member for 5 years or until the person's nomination is withdrawn, whichever is earlier. Subsection (2) covers the unlikely situation where the nominee ceases to be a member before the commencement of the Act and provides for the chief executive to continue as a member for 5 years or until the person stops holding the office of chief executive, whichever happens first. The State librarian's appointment as a member is not preserved.

Section 75 preserves the State librarian's appointment as State librarian on the same terms.

Section 76 enables renumbering of the next reprint of the *Libraries and Archives Act 1988*.

Section 77 provides for the expiry of new Part 8 in 5 years.

PART 3 - AMENDMENT OF *QUEENSLAND ART GALLERY ACT 1987*

Clause 26 states that Part 3 and Schedule 2 amend the *Queensland Art Gallery Act 1987*.

Clause 27 replaces section 5 with new definitions of “appropriately qualified”, “art gallery”, “board”, “chairperson”, “deputy chairperson”, “director”, “member”, “operational plan”, “standard” and “strategic plan”.

The definitions of “operational plan” and “strategic plan” reflect the link between the *Financial Management Standard 1997* and the *Queensland Art Gallery Act 1987* in terms of planning by providing that the plans are developed under both pieces of legislation.

Clause 28 replaces sections 6 to 17 with new sections 6 to 14 which cover similar subject matter. The sections are the same, and follow the same sequence, as sections 8 to 16 of the *Libraries and Archives Act 1988*.

Section 6 continues in existence the legal entity known as the Queensland Art Gallery Board of Trustees which is defined in section 5 as the “board”.

Section 7 continues the board as a body corporate and, as such, a separate legal entity with the legal characteristics of a body corporate, namely, perpetual succession, a common seal and the ability to sue and be sued.

Section 8 expressly continues the board as a representative of the State.

Section 9 outlines the composition of the board. The board is to be comprised of the number of members appointed by the Governor in Council under the *Queensland Art Gallery Act 1987*. Members are not appointed under the *Public Service Act 1996*. In appointing the members, subsection (2) requires regard to be had to the person’s ability to contribute to the board’s performance and the implementation of its strategic and operational plans.

Section 10 sets out the role of the members in relation to the board. The members’ role is effectively that of the governing body of the board.

Section 11 prohibits the appointment as members of persons who are ineligible to manage corporations under the *Corporations Law*.

Section 12 requires the Governor in Council to appoint a chairperson and for the members to elect a deputy chairperson. The chairperson and deputy chairperson are able to resign by notice to the Minister without resigning as members.

Section 13 prescribes a maximum term for membership of 5 years. A

person ceases to be a member if the person resigns, becomes ineligible to manage corporations under the *Corporations Law* or the Governor in Council terminates the appointment. The Governor in Council's ability to terminate appointments is unfettered so that the principle of strict accountability for performance can be implemented.

Section 14 provides that the terms of members' appointments, including entitlements to benefits, are those determined by the Governor in Council.

Clause 29 amends section 18 so that the appointment of the director of the Queensland Art Gallery by the Governor in Council is made upon the recommendation of, and upon conditions not provided for by the Act that are decided by, the board. Amendments with the same effect have been made to section 19 of the *Libraries and Archives Act 1988*.

Clause 30 replaces section 19 and also inserts new sections 19A to 19D. The sections are the same, and follow the same sequence, as sections 19AA to 19B of the *Libraries and Archives Act 1988*.

Section 19 states that the role of the director is to manage the body corporate, the board, under the board's governing body, the members, who have ultimate responsibility for managing the board.

Section 19A ensures that the director attends all meetings of the board, unless excused or precluded by the board, in circumstances where the director is not a member.

Section 19B provides that things done by the director in the name of, or for, the board are taken to have been done by the board.

Section 19C gives the director the power to delegate to appropriately qualified staff of the board, whether they be appointed under the *Queensland Art Gallery Act 1987* or under the *Public Service Act 1996*.

Section 19D gives the board the express ability to be involved in superannuation schemes. This provision will enable the board to continue to take part in the scheme in which it currently takes part.

Clause 31 replaces subsection (f) with subsection (1)(f) and inserts new subsections (1)(g), (1)(h) and (2) in section 20. The current subsection (f) appears to be a statement of a power rather than a function. The new subsections are the same, and follow the same sequence, as the new subsections (1)(j), (k) and (1) and (2) of section 21 of the *Libraries and*

Archives Act 1988.

Subsection (1)(f) gives the board functions conferred under another Act.

Subsection (1)(g) gives the board functions incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions listed in the earlier subsections of section 20.

Subsection (1)(h) enables the Minister to give the board functions of the type given in subsection (1)(g). The subsection is intended to enable the Minister to clarify what functions the board should be performing under subsection (1)(g). Subsection (2) requires the Minister to consult with the board before giving it a function under subsection (1)(g).

Clause 32 replaces sections 21 to 26 with new Part 2 Division 2A (Legal capacities and powers). The sections in Division 2A are very similar to new Part 3 Division 2A of the *Libraries and Archives Act 1988*.

Section 21 outlines the objects of Division 2A to include the abolition of the doctrine of ultra vires and ensuring that third parties are protected in their dealings with the board. An act is ultra vires if it exceeds the authority conferred by law and is invalid.

Section 21A subsection (1) gives the board all of the powers of an individual in the performance of its functions. Subsection (1) contains some limited examples of the powers of an individual. Subsection (2) states that, in addition to the powers of an individual conferred under subsection (1), the board has powers expressly given to it under the *Queensland Art Gallery Act 1987* or another Act. An example of a power given under another Act is the power to invest under the *Statutory Bodies Financial Arrangements Act 1982* which is not covered by the board's powers of an individual. Subsection (3) enables the board to exercise its powers anywhere.

Section 21B effectively replaces and narrows existing section 26 and gives the Minister a general power to direct the board. The Minister is required to exercise the power in writing, ensuring transparency in any Ministerial control of the board.

Section 21C subsections (1) and (2) set out how the board's wide powers are restricted. The powers are restricted by any express restrictions contained in the *Queensland Art Gallery Act 1987*, another Act, any relevant strategic or operational plan or any written Ministerial directions.

Subsections (3) to (7) set out the position of the board, the board's officers and third parties if the board exercises a power contrary to a restriction or otherwise than in pursuance of its functions. The board, and any officer involved, are taken to have contravened the section but this, of itself, does not mean the board or officer are guilty of an offence. The exercise of the power is not necessarily invalid.

Section 21D sets out the assumptions that a person having dealings with, or a person who has acquired or purports to have acquired title to property from, the board is entitled to make.

Section 22 restricts the board's power to contract with a third party to establish a branch of the Queensland Art Gallery. The power can only be exercised with the approval of the Governor in Council. This restriction appears in existing section 22.

Section 23 is effectively a redrafting of existing section 24(2), (2A) and (2B). It gives the board the power to sell, exchange or otherwise dispose of certain limited works of art. The board's powers under this section are limited to only those works of art that are submitted to the board for exhibition or another purpose that are not collected within a certain period of time. The board's power to sell, exchange or otherwise dispose of the work of art cannot be exercised if the owner and the board have made other arrangements about the work.

Before selling, exchanging or otherwise disposing of the work of art the board must give notice to the owner. Any sale must be by way of public auction, notice of which must be given under section 26. The proceeds of sale are required to be kept for the owner for 1 year and, if unclaimed, can then be used by the board for its functions.

Section 24 requires the board to use the net proceeds of sale of any of its works of art for its functions. This effectively redrafts that part of existing section 24(1) that does not breach the fundamental legislative principles. The part of section 24(1) that breaches the fundamental legislative principles has been omitted from the Act.

Section 25 gives the board power to sell or dispose of abandoned property. Any sale is required to be by public auction. Notice of the sale is required to be given under section 26. The board can otherwise dispose of the abandoned property if it considers, on reasonable grounds, that it is not viable to sell it. The board can destroy abandoned property that is

dangerous or unfit for its intended use.

Section 26 requires the board to give notice of a proposed sale of works of art to which section 23 applies or of abandoned property.

Section 26A validates any sale or other disposal of works of art to which section 23 applies or of abandoned property. It also provides that no stamp duty is payable on the sale or disposal.

The effect of the amendments proposed by clauses 33 to 36 is to have sections the same, and following the same sequence, as new sections 29 to 36 of the *Libraries and Archives Act 1988*.

Clause 33 omits subsection (2) of section 27. The subject matter (notices of meetings) is a matter for the board to determine.

Clause 34 inserts new section 27A which sets out who is to preside at meetings of the members.

Clause 35 replaces sections 29 and 30 with new sections 29, 29A and 30.

Section 29 leaves the matter of when and where members meetings should take place to the board to decide. Subsections (2) and (3) enable the members to conduct meetings using various forms of communication technology.

Section 29A enables the members to pass resolutions without meetings.

Section 30 requires the board to keep minutes of meetings.

Clause 36 replaces sections 32 to 34.

Section 32 requires members to disclose, and record in the board's minutes, any direct or indirect interests in matters being considered by the board. A penalty of 100 penalty units is prescribed for contravention of the section.

Section 33 prevents an interested member from voting on certain resolutions. There is a penalty of 100 penalty units for contravention. The members can pass a resolution enabling a member to vote notwithstanding the member's interest in the matter being considered.

Section 34 sets out the board's power to delegate. The persons to whom the board can delegate are set out in the subsections. Staff to whom the board delegates must be appropriately qualified. The board must resolve to delegate its power under the section.

Clause 37 omits existing Part 3 which deals with financial matters that are largely matters for the board to determine. New Parts 3 (comprising sections 36 to 45), 3A and 3B are inserted. The new parts are the same, and follow the same sequence as, new Parts 3A, 3B and 3C of the *Libraries and Archives Act 1988*.

Section 36 sets out the way in which the provisions of Part 3 apply if the Minister and the Treasurer are the same person. Anything required to be done by, or in relation to, both is taken to have been done by, or in relation to, both if done only by, or in relation to, the Minister.

Section 37 explains how the *Financial Management Standard 1997* and Part 3 interact. Part 3 prevails to the extent of any inconsistency. If something is required under Part 3 and something similar is required to be done under the *Financial Management Standard 1997*, the thing is taken to have been done for the purposes of both if done under Part 3.

Section 38 requires draft strategic and operational plans to be submitted to the Minister and copies to be provided to the Treasurer within the set time limits. The requirement that planning and funding documents be linked is set out in subsection (3). There is a requirement to seek to reach agreement on the draft plans.

Section 39 enables the Minister to ask the board to reconsider its draft plans and to give the board written directions in relation to the draft plans within certain time limits. The Minister must consult with the Treasurer where there are resource implications that are likely to require additional State funding.

Section 40 requires formal approval of the plans in writing by the Minister, but only after Parliamentary appropriations have been made. As the plans will contain funding documentation, this ensures the Minister does not agree funding matters until appropriations have been made. Formal approval reinforces the nature of the plans as performance agreements.

Section 41 covers the situation where plans have not been agreed before the start of the relevant financial year. In those circumstances, the draft plans last submitted, as modified by any Ministerial directions, are taken to be the board's plans.

Section 42 enables the plans to be modified only with the written agreement of the Minister or by written Ministerial direction. Modifications

that are likely to result in additional State funding must first be approved by the Treasurer.

Section 43 requires the strategic plan to contain the State's agreed triennial funding proposals.

Section 44 sets out matters to be included in the operational plan.

Section 45 requires the board's information systems and physical assets strategic plans to be included in its strategic plan.

Sections 45A and 45B comprise the new Part 3A.

Section 45A requires the board to keep the Minister informed of its operations, give the Minister information required in order to monitor the board's operations and advise the Minister of matters affecting its operations and performance.

Section 45B contains a reserve Ministerial power to instigate an investigation of the operations of the board. The investigator is required to be appropriately qualified. The investigator is given wide powers to direct the board in relation to the investigation.

Section 45C is the only section in new Part 3B. It requires the annual report of the board to contain summarised information regarding the operational plan of the board and of Ministerial directions given during the relevant financial year.

Clause 38 replaces sections 46 to 49 with new sections 46 to 49H. Most of these sections are redrafted versions of sections 46 to 49 and other sections omitted from other parts of the Act. The sections are very similar to, and follows almost the same sequence as, sections 68 to 68I of the *Libraries and Archives Act 1988*.

Section 46 gives the Minister the power to delegate the Minister's powers under the Act and sets out some important exceptions.

Section 47 redrafts and narrows existing section 47 and protects against civil liability a member acting honestly and without negligence. The liability attaches instead to the board. The protection is subject to section 48.

Section 48 operates to render personally liable any member who consents to the board borrowing an amount that it is not authorised to borrow or repaying a borrowed amount that it was not authorised to borrow. There is an exception where the members believe, on grounds that

are reasonable in all the circumstances, that the board was authorised to borrow.

Section 49 effectively replaces existing section 40 and provides that the board is a statutory body for the purposes of the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Section 49A effectively replaces and narrows existing section 23 and provides that, for the application of the rule against perpetuities to gifts to the board, the board's purposes are charitable.

Section 49B exempts from stamp duty any transfer of property to the board. This puts beyond doubt that neither the board nor a third party transferee of property (including gifts) to the board are liable to pay stamp duty.

Section 49C declares the places comprising the Queensland Art Gallery or any branches to be public places. This means that Acts conferring or imposing police powers or functions in respect of a public place or providing for offences committed in a public place apply to the places.

Section 49D sets out how the board's seal can be witnessed on documents that are required to be signed under seal. This effectively replaces existing section 33.

Section 49E sets out how documents that are not required to be signed under seal are to be signed by the board.

Section 49F effectively replaces existing section 46. It enables a court to make an order against a person found guilty of an offence, whether or not a conviction is recorded, to pay the board the amount of any reward the board has paid or contracted to pay for information relating to the offence. The offence must relate to property of, or in the possession of, the board.

Section 49G effectively replaces existing section 49 with a simplified section that accords with modern drafting protocols and practice. It enables proceedings for offences under the Act to be instituted under the *Justices Act 1886*.

Section 49H effectively replaces existing section 48. It enables the board to allege that property in its possession is property of the board for the purposes of proceedings for offences committed in relation to the property.

Clause 39 provides for the omission of the by-law making power in existing section 50. The existing by-law making power deals with subject matter that are internal management matters for the board to determine that need not constitute subordinate legislation, or matters that, under the fundamental legislative principles, are inappropriate for subordinate legislation or are adequately covered by the common law or other statute law.

Clause 40 inserts new Part 5 which contains saving and transitional provisions.

Section 54 ensures that all but one of the current members continue in office on the same terms. At present, there are two ex officio members, the director and the nominee of the chief executive. Subsection (3) provides for chief executive's nominee to continue as a member for 5 years or until the person's nomination is withdrawn, whichever is earlier. Subsection (2) covers the unlikely situation where the nominee ceases to be a member before the commencement of the Act and provides for the chief executive to continue as a member for 5 years or until the person stops holding the office of chief executive, whichever happens first. The director's appointment as a member is not preserved.

Section 55 preserves the director's appointment as director on the same terms.

Section 56 enables renumbering of the next reprint of the *Queensland Art Gallery Act 1987*.

Section 57 provides for the expiry of new Part 5 in 5 years.

PART 4 - AMENDMENT OF *QUEENSLAND MUSEUM ACT 1970*

Clause 41 states that Part 4 and Schedule 3 amend the *Queensland Museum Act 1970*.

Clause 42 replaces the definitions in section 3 of "board" and "member" and inserts definitions of "appropriately qualified", "deputy chairperson",

“director”, “operational plan”, “standard” and “strategic plan”.

The definitions of “operational plan” and “strategic plan” reflect the link between the *Financial Management Standard 1997* and the *Queensland Museum Act 1970* in terms of planning by providing that the plans are developed under both pieces of legislation.

Clause 43 replaces existing Part 2 Division 1. New sections 4 to 11A cover similar subject matter. The sections are very similar to, and follow the same sequence as, sections 8 to 16 of the *Libraries and Archives Act 1988*.

Section 4 continues in existence the legal entity currently known as the Queensland Museum Board of Trustees under a new name, the Board of the Queensland Museum. The legal entity, the Board of the Queensland Museum, is defined in section 3 as the “board”.

Section 5 continues the board as a body corporate and, as such, a separate legal entity with the legal characteristics of a body corporate, namely, perpetual succession, a common seal and the ability to sue and be sued.

Section 6 states that the board represents the State.

Section 7 outlines the composition of the board. The board is to be comprised of the number of members appointed by the Governor in Council under the *Queensland Museum Act 1970*. Members are not appointed under the *Public Service Act 1996*. In appointing the members, subsection (2) requires regard to be had to the person’s ability to contribute to the board’s performance and the implementation of its strategic and operational plans.

Section 8 sets out the role of the members in relation to the board. The members’ role is effectively that of the governing body of the board.

Section 9 prohibits the appointment as members of persons who are ineligible to manage corporations under the *Corporations Law*.

Section 10 requires the Governor in Council to appoint a chairperson and for the members to elect a deputy chairperson. The chairperson and deputy chairperson are able to resign by notice to the Minister without resigning as members.

Section 11 prescribes a maximum term for membership of 5 years. A person ceases to be a member if the person resigns, becomes ineligible to

manage corporations under the *Corporations Law* or the Governor in Council terminates the appointment. The Governor in Council's ability to terminate appointments is unfettered so that the principle of strict accountability for performance can be implemented.

Section 11A provides that the terms of members' appointments, including entitlements to benefits, are those determined by the Governor in Council.

Clause 44 replaces existing subsections (1)(d) to (f) and omits subsection (2) of section 12. Existing subsections (1)(d) and (1)(e) appear to be statements of powers rather than functions. Existing subsection (1)(f) is arguably a Henry VIII clause. The new subsections are the same, and follow the same sequence, as the new subsections (1)(j), (k) and (1) and (2) of section 21 of the *Libraries and Archives Act 1988*.

Subsection (1)(d) gives the board functions conferred under another Act.

Subsection (1)(e) gives the board functions incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions listed in the earlier subsections of section 12.

Subsection (1)(f) enables the Minister to give the board functions of the type given in subsection (1)(e). The subsection is intended to enable the Minister to clarify what functions the board should be performing under subsection (1)(e). Subsection (2) requires the Minister to consult with the board before giving it a function under subsection (1)(f).

Clause 45 replaces sections 13 and 13A and inserts new sections 13B to 13K which constitute new Part 2 Division 2A (Legal capacities and powers). Sections 13 to 13J are very similar to, and follow the same sequence as, sections 21 to 26A of the *Queensland Art Gallery Act 1987*.

Section 13 outlines the objects of Division 2A to include the abolition of the doctrine of ultra vires and ensuring that third parties are protected in their dealings with the board. An act is ultra vires if it exceeds the authority conferred by law and is invalid.

Section 13A subsection (1) gives the board all of the powers of an individual in the performance of its functions. Subsection (1) contains some limited examples of the powers of an individual. Subsection (2) states that, in addition to the powers of an individual conferred under subsection (1), the board has powers expressly given to it under the

Queensland Museum Act 1970 or another Act. An example of a power given under another Act is the power to invest under the *Statutory Bodies Financial Arrangements Act 1982* which is not covered by the board's powers of an individual. Subsection (3) enables the board to exercise its powers anywhere.

Section 13B gives the Minister a general power to direct the board. The Minister is required to exercise the power in writing, ensuring transparency in any Ministerial control of the board.

Section 13C subsections (1) and (2) set out how the board's wide powers are restricted. The powers are restricted by any express restrictions contained in the *Queensland Museum Act 1970*, another Act, any relevant strategic or operational plan or any written Ministerial directions. Subsections (3) to (7) set out the position of the board, the board's officers and third parties if the board exercises a power contrary to a restriction or otherwise than in pursuance of its functions. The board, and any officer involved, are taken to have contravened the section but this, of itself, does not mean the board or officer are guilty of an offence. The exercise of the power is not necessarily invalid.

Section 13D sets out the assumptions that a person having dealings with, or a person who has acquired or purports to have acquired title to property from, the board is entitled to make.

Section 13E restricts the board's power to contract with a third party to establish a branch of the Queensland Museum. The power can only be exercised with the approval of the Governor in Council. This restriction appears in existing section 25.

Section 13F is substantially a redrafting of existing section 43. It gives the board the power to sell, exchange or otherwise dispose of certain specimens. The board's powers under the section are limited to only those specimens that are submitted to the board for identification, investigation or another purpose that are not collected within a certain period of time. The board's power to sell, exchange or otherwise dispose of the specimens cannot be exercised if the owner and the board have made other arrangements about the specimens.

Before selling, exchanging or otherwise disposing of the specimens the board must give notice to the owner. Any sale must be by way of public auction, notice of which must be given under section 13I. The proceeds of

sale are required to be kept for the owner for 1 year and, if unclaimed, can then be used by the board for its functions.

The requirement to give notice of proposed sale, exchange or disposal is not required if the specimen is perishable and it is not viable to sell or exchange it.

Section 13G requires the board to use the net proceeds of sale of any of its own specimens for its functions.

Section 13H is substantially a redraft of existing section 42. It gives the board power to sell or dispose of abandoned property. Any sale is required to be by public auction. Notice of the sale is required to be given under section 13I. The board can otherwise dispose of the abandoned property if it considers, on reasonable grounds, that it is not viable to sell it. The board can destroy abandoned property that is dangerous or unfit for its intended use.

Section 13I requires the board to give notice of a proposed sale of specimens to which section 13F applies or of abandoned property.

Section 13J validates any sale or other disposal of specimens to which section 13F applies or of abandoned property. It also provides that no stamp duty is payable on the sale or disposal.

Section 13K effectively replaces existing section 13A and enables the board to establish committees that may include non-members. In appointing a person to a committee, the board must have regard to the person's ability to take part in the exercise of the powers delegated to the committee. The committees can exercise the powers delegated to them by the board under section 23.

Clause 46 replaces sections 16 to 23B with new sections 14 to 23F which cover similar subject matter.

Section 14 enables the board to conduct its business and proceedings at meetings as it determines.

Section 15 sets out who is to preside at meeting of the members.

Section 16 sets out how many members constitute a quorum and provides that a meeting at which a quorum is present can perform the functions and exercise the powers of the board.

Section 17 leaves the matter of when and where the members meetings

should take place to the board to decide. Subsections (2) and (3) enable the members to conduct meetings using various forms of communication technology.

Section 18 enables the members to pass resolutions without meetings.

Section 19 requires the board to keep minutes of meetings.

Section 20 provides that decisions of the board are made by a majority of votes, abstaining members are taken to have voted in the negative and the person presiding has a casting vote.

Section 21 requires members to disclose, and record in the board's minutes, any direct or indirect interests in matters being considered by the board. A penalty of 100 penalty units is prescribed for contravention of the section.

Section 22 prevents an interested member from voting on certain resolutions. There is a penalty of 100 penalty units for contravention. The members can pass a resolution enabling a member to vote notwithstanding the member's interest in the matter being considered.

Section 23 sets out the board's power to delegate and replaces existing section 26. The persons to whom the board can delegate are set out in the subsections. Staff to whom the board delegates must be appropriately qualified. The board must resolve to delegate its power under the section.

Section 23A replaces existing section 23A and varies slightly the position regarding appointment of the director of the Queensland Museum. Subsections (1) and (2) provide that the director's appointment by the Governor in Council is made upon the recommendation of, and upon the conditions not provided for by the Act that are decided by, the board. Subsection (3) reinstates part of existing section 23A as a separate subsection. It provides for the appointment of officers under the *Public Service Act 1996*.

Section 23B replaces existing section 23B and provides that the role of the director is to manage the body corporate, the board, under the board's governing body, the members, who have ultimate responsibility for managing the board.

Section 23C ensures that the director attends all meetings of the board, unless excused or precluded by the board, in circumstances where the

director is not a member.

Section 23D provides that things done by the director in the name of, or for, the board are taken to have been done by the board.

Section 23E gives the director the power to delegate to appropriately qualified staff of the board, whether they be appointed under the *Queensland Museum Act 1970* or under the *Public Service Act 1996*.

Section 23F gives the board the express ability to be involved in superannuation schemes. This provision will enable the board to continue to take part in the scheme in which it currently takes part.

Clause 47 omits existing Part 3 which deals with financial matters that are largely matters for the board to determine. New Parts 3 (comprising sections 27 to 34B), 3A and 3B are inserted. The new parts are the same, and follow the same sequence as, new Parts 3A, 3B and 3C of the *Libraries and Archives Act 1988*.

Section 27 sets out the way in which the provisions of Part 3 apply if the Minister and the Treasurer are the same person. Anything required to be done by, or in relation to, both is taken to have been done by, or in relation to, both if done only by, or in relation to, the Minister.

Section 28 explains how the *Financial Management Standard 1997* and Part 3 interact. Part 3 prevails to the extent of any inconsistency. If something is required under Part 3 and something similar is required to be done under the *Financial Management Standard 1997*, the thing is taken to have been done for the purposes of both if done under Part 3.

Section 29 requires draft strategic and operational plans to be submitted to the Minister and copies to be provided to the Treasurer within the set time limits. The requirement that planning and funding documents be linked is set out in subsection (3). There is a requirement to seek to reach agreement on the draft plans.

Section 30 enables the Minister to ask the board to reconsider its draft plans and to give the board written directions in relation to the draft plans within certain time limits. The Minister must consult with the Treasurer where there are resource implications that are likely to require additional State funding.

Section 31 requires formal approval of the plans in writing by the

Minister, but only after Parliamentary appropriations have been made. As the plans will contain funding documentation, this ensures the Minister does not agree funding matters until appropriations have been made. Formal approval reinforces the nature of the plans as performance agreements.

Section 32 covers the situation where plans have not been agreed before the start of the relevant financial year. In those circumstances, the draft plans last submitted, as modified by any Ministerial directions, are taken to be the board's plans.

Section 33 enables the plans to be modified only with the written agreement of the Minister or by written Ministerial direction. Modifications that are likely to result in additional State funding must first be approved by the Treasurer.

Section 34 requires the strategic plan to contain the State's agreed triennial funding proposals.

Section 34A sets out matters to be included in the operational plan.

Section 34B requires the board's information systems and physical assets strategic plans to be included in its strategic plan.

Sections 34C and 34D comprise the new Part 3A.

Section 34C requires the board to keep the Minister informed of its operations, give the Minister information required in order to monitor the board's operations and advise the Minister of matters affecting its operations and performance.

Section 34D contains a reserve Ministerial power to instigate an investigation of the operations of the board. The investigator is required to be appropriately qualified. The investigator is given wide powers to direct the board in relation to the investigation.

Section 35 is the only section in new Part 3B. It requires the annual report of the board to contain summarised information regarding the operational plan of the board and of Ministerial directions given during the relevant financial year.

Clause 48 replaces sections 35A to 38 with new sections 36 to 38I. The sections are the same, and follow almost the same sequence, as sections 46 to 49H of the *Queensland Art Gallery Act 1987*.

Section 36 gives the Minister the power to delegate the Minister's

powers under the Act and sets out some important exceptions.

Section 37 is a redraft of existing section 22 and protects against civil liability a member, a person appointed to a committee under section 13K or an honorary assistant appointed under section 24A, acting honestly and without negligence. The liability attaches instead to the board. The protection is subject to section 38.

Section 38 operates to render personally liable any member who consents to the board borrowing an amount that it is not authorised to borrow or repaying a borrowed amount that it was not authorised to borrow. There is an exception where the members believe, on grounds that are reasonable in all the circumstances, that the board was authorised to borrow.

Section 38A effectively replaces existing section 32 and provides that the board is a statutory body for the purposes of the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982*.

Section 38B effectively replaces existing section 23(3) and provides that, for the application of the rule against perpetuities to gifts to the board, the board's purposes are charitable.

Section 38C exempts from stamp duty any transfer of property to the board. This puts beyond doubt that neither the board nor a third party transferee of property (including gifts) to the board are liable to pay stamp duty.

Section 38D declares the places comprising the Queensland Museum or any branches to be public places. This means that Acts conferring or imposing police powers or functions in respect of a public place or providing for offences committed in a public place apply to the places.

Section 38E sets out how the board's seal can be witnessed on documents that are required to be signed under seal. This effectively replaces existing section 20.

Section 38F sets out how documents that are not required to be signed under seal are to be signed by the board.

Section 38G effectively replaces existing section 37. It enables a court to make an order against a person found guilty of an offence, whether or not a

conviction is recorded, to pay the board the amount of any reward the board has paid or contracted to pay for information relating to the offence. The offence must relate to property of, or in the possession of, the board.

Section 38H provides that proceedings for offences under the *Queensland Museum Act 1970* may be instituted summarily under the *Justices Act 1886*.

Section 38I effectively replaces existing section 38. It enables the board to allege that property in its possession is property of the board for the purposes of proceedings for offences committed in relation to the property.

Clause 49 provides for the omission of the by-law making power in existing section 39. The existing by-law making power deals with subject matter that are internal management matters for the board to determine that need not constitute subordinate legislation, or matters that, under the fundamental legislative principles, are inappropriate for subordinate legislation or are adequately covered by the common law or other statute law.

Clause 50 inserts new Part 5 which contains saving and transitional provisions.

Section 45 defines the term “pre-amended Act”.

Section 46 ensures that the current members continue in office on the same terms. At present, there are two ex officio members, the director and the chief executive’s nominee. Subsection (4) provides for chief executive’s nominee to continue as a member for 5 years or until the person’s nomination is withdrawn, whichever is earlier. Subsection (3) covers the unlikely situation where the nominee ceases to be a member before the commencement of the Act and provides for the chief executive to continue as a member for 5 years or until the person stops holding the office of chief executive, whichever happens first. Subsection (5) provides for the director to continue as a member for 5 years or until the person stops holding the office of director, whichever is earlier.

Section 47 preserves the appointments of the director as the holder of the office of director and other staff on the same terms.

Section 48 preserves the existing committees established under existing section 13A as committees established under new section 13K.

Section 49 preserves the continued appointment of honorary assistants appointed under section 24A of the *Queensland Museum Act 1970*.

Section 50 provides that the change in the name of the legal entity formerly known as the Queensland Museum Board of Trustees to the Board of the Queensland Museum does not change the legal entity and has no legal effect other than to change the entity's name.

Section 51 provides that the change of the name does not affect existing legal relationships between the Board of the Queensland Museum and third parties.

Section 52 enables renumbering of the next reprint of the *Queensland Museum Act 1970*.

Section 53 provides for the expiry of new Part 5 in 5 years.

PART 5 - AMENDMENT OF THE *QUEENSLAND PERFORMING ARTS TRUST ACT 1977*

Clause 51 states that Part 5 and Schedule 4 amend the *Queensland Performing Arts Trust Act 1977*.

Clause 52 replaces section 3 with new definitions of “appropriately qualified”, “chairperson”, “complex”, “deputy chairperson”, “director”, “equipment”, “member”, “operational plan”, “standard”, “strategic plan”, “the performing arts” and “trust”.

The definitions of “operational plan” and “strategic plan” reflect the link between the *Financial Management Standard 1997* and the *Queensland Performing Arts Trust Act 1977* in terms of planning by providing that the plans are developed under both pieces of legislation.

Clause 53 replaces sections 5 to 15 with new sections 4 to 12 which cover similar subject matter. The sections are the same, and follow the same sequence, as sections 8 to 16 of the *Libraries and Archives Act 1988*.

Section 4 continues in existence the legal entity known as the Queensland

Performing Arts Trust which is defined in section 3 as the “trust”.

Section 5 continues the trust as a body corporate and, as such, a separate legal entity with the legal characteristics of a body corporate, namely, perpetual succession, a common seal and the ability to sue and be sued.

Section 6 expressly continues the trust as a representative of the State.

Section 7 outlines the composition of the trust. The trust is to be comprised of the number of members appointed by the Governor in Council under the *Queensland Performing Arts Trust Act 1977*. Members are not appointed under the *Public Service Act 1996*. In appointing the members, subsection (2) requires regard to be had to the person’s ability to contribute to the trust’s performance and the implementation of its strategic and operational plans.

Section 8 sets out the role of the members in relation to the trust. The members’ role is effectively that of the governing body of the trust.

Section 9 prohibits the appointment as members of persons who are ineligible to manage corporations under the *Corporations Law*.

Section 10 requires the Governor in Council to appoint a chairperson and for the members to elect a deputy chairperson. The chairperson and deputy chairperson are able to resign by notice to the Minister without resigning as members.

Section 11 prescribes a maximum term for membership of 5 years. A person ceases to be a member if the person resigns, becomes ineligible to manage corporations under the *Corporations Law* or the Governor in Council terminates the appointment. The Governor in Council’s ability to terminate appointments is unfettered so that the principle of strict accountability for performance can be implemented.

Section 12 provides that the terms of members’ appointments, including entitlements to benefits, are those determined by the Governor in Council.

Clause 54 inserts new subsections (1)(h), (1)(i), (1)(j) and (2) into section 16. The new subsections are the same, and follow the same sequence, as the new subsections (1)(j), (k) and (l) and (2) of section 21 of the *Libraries and Archives Act 1988*.

Subsection (1)(h) gives the trust functions conferred under another Act.

Subsection (1)(i) gives the trust functions incidental, complementary or

helpful to, or likely to enhance the effective and efficient performance of, the functions listed in the earlier subsections of section 16.

Subsection (1)(j) enables the Minister to give the trust functions of the type given in subsection (1)(i). The subsection is intended to enable the Minister to clarify what functions the trust should be performing under subsection (1)(i). Subsection (2) requires the Minister to consult with the trust before giving it a function under subsection (1)(j).

Clause 55 replaces sections 17 to 19 with new section 17 to 19F. New sections 17 to 19F comprise new Part 2 Division 2A (Legal capacities and powers). The sections are very similar to new Part 2 Division 2A of the *Queensland Art Gallery Act 1987*.

Section 17 outlines the objects of Division 2A to include the abolition of the doctrine of ultra vires and ensuring that third parties are protected in their dealings with the trust. An act is ultra vires if it exceeds the authority conferred by law and is invalid.

Section 18 subsection (1) gives the trust all of the powers of an individual in the performance of its functions. Subsection (1) contains some limited examples of the powers of an individual. Subsection (2) states that, in addition to the powers of an individual conferred under subsection (1), the trust has powers expressly given to it under the *Queensland Performing Arts Trust Act 1977* or another Act. An example of a power given under another Act is the power to invest under the *Statutory Bodies Financial Arrangements Act 1982* which is not covered by the trust's powers of an individual. Subsection (3) enables the trust to exercise its powers anywhere.

Section 19 effectively replaces and narrows existing section 28A and gives the Minister a general power to direct the trust. The Minister is required to exercise the power in writing, ensuring transparency in any Ministerial control of the trust.

Section 19A subsections (1) and (2) set out how the trust's wide powers are restricted. The powers are restricted by any express restrictions contained in the *Queensland Performing Arts Trust Act 1977*, another Act, any relevant strategic or operational plan or any written Ministerial directions. Subsections (3) to (7) set out the position of the trust, the trust's officers and third parties if the trust exercises a power contrary to a restriction or otherwise than in pursuance of its functions. The trust, and

any officer involved, are taken to have contravened the section but this, of itself, does not mean the trust or officer are guilty of an offence. The exercise of the power is not necessarily invalid.

Section 19B sets out the assumptions that a person having dealings with, or a person who has acquired or purports to have acquired title to property from, the trust is entitled to make.

Section 19C gives the trust the power to sell, exchange or otherwise dispose of certain limited types of property. The trust's powers under the section are limited to property that is submitted to the trust for exhibition or another purpose that is not collected within a certain period of time. The trust's power to sell, exchange or otherwise dispose of the property cannot be exercised if the owner and the trust have made other arrangements about the property.

Before selling, exchanging or otherwise disposing of the property the trust must give notice to the owner. Any sale must be by way of public auction, notice of which must be given under section 19E. The proceeds of sale are required to be kept for the owner for 1 year and, if unclaimed, can then be used by the trust for its functions.

Section 19D gives the trust power to sell or dispose of abandoned property. Any sale is required to be by public auction. Notice of the sale is required to be given under section 19E. The trust can otherwise dispose of the abandoned property if it considers, on reasonable grounds, that it is not viable to sell it. The trust can destroy abandoned property that is dangerous or unfit for its intended use.

Section 19E requires the trust to give notice of a proposed sale of property to which section 19C applies or of abandoned property.

Section 19F validates any sale or other disposal of property to which section 19C applies or of abandoned property. It also provides that no stamp duty is payable on the sale or disposal.

Clause 56 replaces section 22 with new sections 22 to 22B.

Section 22 sets out who is to preside at meetings of the members.

Section 22A leaves the matter of when and where members meetings should take place to the trust to decide. Subsections (2) and (3) enable the members to conduct meetings using various forms of communication

technology.

Section 22B enables the members to pass resolutions without meetings.

Clause 57 replaces sections 25 to 29 with new sections 25 to 29E.

Section 25 requires members to disclose, and record in the trust's minutes, any direct or indirect interests in matters being considered by the trust. A penalty of 100 penalty units is prescribed for contravention of the section.

Section 26 prevents an interested member from voting on certain resolutions. There is a penalty of 100 penalty units for contravention. The members can pass a resolution enabling a member to vote notwithstanding the member's interest in the matter being considered.

Section 27 sets out the trust's power to delegate. The persons to whom the trust can delegate are set out in the subsections. Employees to whom the trust delegates must be appropriately qualified. The trust must resolve to delegate its powers under the section.

Section 28 replaces existing section 26 and varies slightly the position regarding appointment of the director of the Queensland Performing Arts Trust. Subsections (1) and (2) provide that the director's appointment by the Governor in Council is made upon the recommendation of, and upon the conditions not provided for by the Act that are decided by, the trust.

Section 29 provides that the role of the director is to manage the body corporate, the trust, under the trust's governing body, the members, who have ultimate responsibility for managing the trust.

Section 29A ensures that the director attends all meetings of the trust, unless excused or precluded by the trust, in circumstances where the director is not a member.

Section 29B provides that things done by the director in the name of, or for, the trust are taken to have been done by the trust.

Section 29C gives the director the power to delegate to appropriately qualified employees of the trust.

Section 29D replaces existing section 26A and provides for the trust to employ the persons it considers necessary to perform its functions. The terms of employment are to be determined by the trust subject to any relevant award or industrial agreement. Employees are appointed under the

Queensland Performing Arts Trust Act 1977, not under the *Public Service Act 1996*.

Section 29E gives the trust the express ability to be involved in superannuation schemes. This provision will enable the trust to continue to take part in the scheme in which it currently takes part.

Clause 58 amends section 52(4) by updating terminology in light of the omission of existing sections 30 to 33. It also inserts a new subsection (6) into section 54 to put beyond doubt that section 54 does not confer a power to invest on the trust. The trust's power to invest is derived from the *Statutory Bodies Financial Arrangements Act 1982*.

Clause 59 inserts new Parts 3A (comprising sections 52A to 52J), 3B and 3C. The new parts are the same, and follow the same sequence, as new Parts 3A, 3B and 3C of the *Libraries and Archives Act 1988*.

Section 52A sets out the way in which the provisions of Part 3A apply if the Minister and the Treasurer are the same person. Anything required to be done by, or in relation to, both is taken to have been done by, or in relation to, both if done only by, or in relation to, the Minister.

Section 52B explains how the *Financial Management Standard 1997* and Part 3A interact. Part 3A prevails to the extent of any inconsistency. If something is required under Part 3A and something similar is required to be done under the *Financial Management Standard 1997*, the thing is taken to have been done for the purposes of both if done under Part 3A.

Section 52C requires draft strategic and operational plans to be submitted to the Minister and copies to be provided to the Treasurer within the set time limits. The requirement that planning and funding documents be linked is set out in subsection (3). There is a requirement to seek to reach agreement on the draft plans.

Section 52D enables the Minister to ask the trust to reconsider its draft plans and to give the trust written directions in relation to the draft plans within certain time limits. The Minister must consult with the Treasurer where there are resource implications that are likely to require additional State funding.

Section 52E requires formal approval of the plans in writing by the Minister, but only after Parliamentary appropriations have been made. As the plans will contain funding documentation, this ensures the Minister does

not agree funding matters until appropriations have been made. Formal approval reinforces the nature of the plans as performance agreements.

Section 52F covers the situation where plans have not been agreed before the start of the relevant financial year. In those circumstances, the draft plans last submitted, as modified by any Ministerial directions, are taken to be the trust's plans.

Section 52G enables the plans to be modified only with the written agreement of the Minister or by written Ministerial direction. Modifications that are likely to result in additional State funding must first be approved by the Treasurer.

Section 52H requires the strategic plan to contain the State's agreed triennial funding proposals.

Section 52I sets out matters to be included in the operational plan.

Section 52J requires the trust's information systems and physical assets strategic plans to be included in its strategic plan.

Sections 52K and 52L comprise the new Part 3B.

Section 52K requires the trust to keep the Minister informed of its operations, give the Minister information required in order to monitor the trust's operations and advise the Minister of matters affecting its operations and performance.

Section 52L contains a reserve Ministerial power to instigate an investigation of the operations of the trust. The investigator is required to be appropriately qualified. The investigator is given wide powers to direct the trust in relation to the investigation.

Section 52M is the only section in new Part 3C. It requires the annual report of the trust to contain summarised information regarding the operational plan of the trust and of Ministerial directions given during the relevant financial year.

Clause 60 replaces sections 53 and 54 with new sections 53 and 54B which cover completely different subject matter.

Section 53 gives the Minister the power to delegate the Minister's powers under the Act and sets out some important exceptions.

Section 54 is a redraft of existing section 29 and protects against civil

liability a member acting honestly and without negligence. The liability attaches instead to the trust. The protection is subject to section 54A.

Section 54A operates to render personally liable any member who consents to the trust borrowing an amount that it is not authorised to borrow or repaying a borrowed amount that it was not authorised to borrow. There is an exception where the members believe, on grounds that are reasonable in all the circumstances, that the trust was authorised to borrow.

Section 54B effectively replaces existing section 51(3) and provides that, for the application of the rule against perpetuities to gifts to the trust, the trust's purposes are charitable.

Clause 61 replaces sections 56 to 59 with new sections 56 to 59A.

Section 56 declares the Queensland Performing Arts Complex a public place. This means that Acts conferring or imposing police powers or functions in respect of a public place or providing for offences committed in a public place apply to the Complex.

Section 57 effectively replaces existing section 28 and sets out how the trust's seal can be witnessed on documents that are required to be signed under seal.

Section 58 sets out how documents that are not required to be signed under seal are to be signed by the trust.

Section 59 effectively replaces existing section 58. It enables a court to make an order against a person found guilty of an offence, whether or not a conviction is recorded, to pay the trust the amount of any reward the trust has paid or contracted to pay for information relating to the offence. The offence must relate to property of, or in the possession of, the trust.

Section 59A effectively replaces existing section 59 with a simplified section that accords with modern drafting protocols and practice. It enables proceedings for offences under the Act to be instituted summarily under the *Justices Act 1886*.

Clause 62 amends and modernises the wording of section 60.

Clause 63 provides for the omission of the by-law making power in existing section 64. The existing by-law making power deals with subject matter that are internal management matters for the trust to determine that need not constitute subordinate legislation, or matters that, under the

fundamental legislative principles, are inappropriate for subordinate legislation or are adequately covered by the common law or other statute law.

Clause 64 inserts new Part 5 which contains saving and transitional provisions.

Section 66 ensures that the current members continue in office on the same terms. At present, there are two ex officio members, the director and the chief executive's nominee. Subsection (3) provides for chief executive's nominee to continue as a member for 5 years or until the person's nomination is withdrawn, whichever is earlier. Subsection (2) covers the unlikely situation where the nominee ceases to be a member before the commencement of the Act and provides for the chief executive to continue as a member for 5 years or until the person stops holding the office of chief executive, whichever happens first. Subsection (4) provides for the director to continue as a member for 5 years or until the person stops holding the office of director, whichever is earlier.

Section 67 preserves the appointment of the director in the office of director of the trust and other employees on the same terms.

Section 68 enables renumbering of the next reprint of the *Queensland Performing Arts Trust Act 1977*.

Section 69 provides for the expiry of new Part 5 in 5 years.

PART 6 - AMENDMENT OF ROYAL QUEENSLAND THEATRE COMPANY ACT 1970

Clause 65 states that Part 6 and Schedule 5 amend the *Royal Queensland Theatre Company Act 1970*.

Clause 66 replaces sections 2 to 4 with new sections 2 to 4G. Sections 3 to 4G constitute new Part 2 Division 1 (Constitution and membership) and are very similar to, and follow the same sequence as, new sections 8 to 16 of the *Libraries and Archives Act 1988*.

Section 2 contains definitions of “appropriately qualified”,

“chairperson”, “deputy chairperson”, “director”, “member”, “operational plan”, “standard”, “strategic plan”, “theatre company” and “theatre equipment”.

The definitions of “operational plan” and “strategic plan” reflect the link between the *Financial Management Standard 1997* and the *Royal Queensland Theatre Company Act 1970* in terms of planning by providing that the plans are developed under both pieces of legislation.

Section 3 continues in existence the legal entity known as the Royal Queensland Theatre Company which is defined in section 2 as the “theatre company”.

Section 4 continues the theatre company as a body corporate and, as such, a separate legal entity with the legal characteristics of a body corporate, namely, perpetual succession, a common seal and the ability to sue and be sued.

Section 4A states that the theatre company represents the State.

Section 4B outlines the composition of the theatre company. The theatre company is to be comprised of the number of members appointed by the Governor in Council under the *Royal Queensland Theatre Company Act 1970*. Members are not appointed under the *Public Service Act 1996*. In appointing the members, subsection (2) requires regard to be had to the person’s ability to contribute to the theatre company’s performance and the implementation of its strategic and operational plans.

Section 4C replaces existing section 7 and sets out the role of the members in relation to the theatre company. The members’ role is effectively that of the governing body of the theatre company.

Section 4D prohibits the appointment as members of persons who are ineligible to manage corporations under the *Corporations Law*.

Section 4E requires the Governor in Council to appoint a chairperson and for the members to elect a deputy chairperson. The chairperson and deputy chairperson are able to resign by notice to the Minister without resigning as members.

Section 4F prescribes a maximum term for membership of 5 years. A person ceases to be a member if the person resigns, becomes ineligible to

manage corporations under the *Corporations Law* or the Governor in Council terminates the appointment. The Governor in Council's ability to terminate appointments is unfettered so that the principle of strict accountability for performance can be implemented.

Section 4G provides that the terms of members' appointments, including entitlements to benefits, are those determined by the Governor in Council.

Clause 67 inserts new subsections (1)(h), (1)(i), (1)(j) and (2) into section 5. The new subsections are the same, and follow the same sequence, as the new subsections (1)(j), (k) and (l) and (2) of section 21 of the *Libraries and Archives Act 1988*.

Subsection (1)(h) gives the theatre company functions conferred under another Act.

Subsection (1)(i) gives the theatre company functions incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions listed in the earlier subsections of section 5.

Subsection (1)(j) enables the Minister to give the theatre company functions of the type given in subsection (1)(i). The subsection is intended to enable the Minister to clarify what functions the theatre company should be performing under subsection (1)(i). Subsection (2) requires the Minister to consult with the theatre company before giving it a function under subsection (1)(j).

Clause 68 replaces sections 6 to 25 with new Part 2 Division 3 (Legal capacities and powers—comprising new sections 6 to 13), Division 4 (Proceedings and business—comprising new sections 14 to 23), Division 5 (Director and staff—comprising sections 24 to 24F) and Division 6 (Committees—comprising section 25).

New Part 2 Division 3 is similar to, and follows the same sequence as, new Part 3 Division 2A of the *Libraries and Archives Act 1988*.

Section 6 outlines the objects of Division 3 to include the abolition of the doctrine of ultra vires and ensuring that third parties are protected in their dealings with the theatre company. An act is ultra vires if it exceeds the authority conferred by law and is invalid.

Section 7 subsection (1) gives the theatre company all of the powers of an individual in the performance of its functions. Subsection (1) contains

some limited examples of the powers of an individual. Subsection (2) states that, in addition to the powers of an individual conferred under subsection (1), the theatre company has powers expressly given to it under the *Royal Queensland Theatre Company Act 1970* or another Act. An example of a power given under another Act is the power to invest under the *Statutory Bodies Financial Arrangements Act 1982* which is not covered by the theatre company's powers of an individual. Subsection (3) enables the theatre company to exercise its powers anywhere.

Section 8 gives the Minister a general power to direct the theatre company. The Minister is required to exercise the power in writing, ensuring transparency in any Ministerial control of the theatre company.

Section 9 subsections (1) and (2) set out how the theatre company's wide powers are restricted. The powers are restricted by any express restrictions contained in the *Royal Queensland Theatre Company Act 1970*, another Act, any relevant strategic or operational plan or any written Ministerial directions. Subsections (3) to (7) set out the position of the theatre company, the company's officers and third parties if the company exercises a power contrary to a restriction or otherwise than in pursuance of its functions. The company, and any officer involved, are taken to have contravened the section but this, of itself, does not mean the company or officer are guilty of an offence. The exercise of the power is not necessarily invalid.

Section 10 sets out the assumptions that a person having dealings with, or a person who has acquired or purports to have acquired title to property from, the theatre company is entitled to make.

Section 11 gives the theatre company the power to sell or dispose of abandoned property. Any sale is required to be by public auction. Notice of the sale is required to be given under section 12. The company can otherwise dispose of the abandoned property if it considers, on reasonable grounds, that it is not viable to sell it. The company can destroy abandoned property that is dangerous or unfit for its intended use.

Section 12 requires the theatre company to give notice of a proposed sale of abandoned property.

Section 13 validates any sale or other disposal of abandoned property

under section 11 and provides that no stamp duty is payable on the sale or disposal.

The provisions of new Part 2 Division 4 are very similar to, and follow the same sequence as, new sections 29 to 36 of the *Libraries and Archives Act 1988*.

Section 14 enables the theatre company to conduct its business and proceedings at meetings as it determines.

Section 15 sets out how many members constitute a quorum and provides that a meeting at which a quorum is present can perform the functions and exercise the powers of the theatre company.

Section 16 sets out who is to preside at meeting of the members.

Section 17 leaves the matter of when and where the members meetings should take place to the theatre company to decide. Subsections (2) and (3) enable the members to conduct meetings using various forms of communication technology.

Section 18 enables the members to pass resolutions without meetings.

Section 19 requires the theatre company to keep minutes of meetings.

Section 20 provides that decisions of the theatre company are made by a majority of votes, abstaining members are taken to have voted in the negative and the person presiding has a casting vote.

Section 21 requires members to disclose, and record in the theatre company's minutes, any direct or indirect interests in matters being considered by the theatre company. A penalty of 100 penalty units is prescribed for contravention of the section.

Section 22 prevents an interested member from voting on certain resolutions. There is a penalty of 100 penalty units for contravention. The members can pass a resolution enabling a member to vote notwithstanding the member's interest in the matter being considered.

Section 23 sets out the theatre company's power to delegate and replaces existing section 16. The persons to whom the theatre company can delegate are set out in the subsections. Employees to whom the theatre company delegates must be appropriately qualified. The theatre company must resolve to delegate its powers.

The provisions of new Part 2 Division 5 are very similar to and follow the same sequence as new sections 19AA to 19B of the *Libraries and Archives Act 1988*.

Section 24 provides that the director's appointment by the Governor in Council is made upon the recommendation of, and upon the conditions not provided for by the Act that are decided by, the theatre company.

Section 24A provides that the role of the director is to manage the body corporate, the theatre company, under the company's governing body, the members, who have ultimate responsibility for managing the company.

Section 24B ensures that the director attends all meetings of the theatre company, unless excused or precluded by the theatre company, in circumstances where the director is not a member.

Section 24C provides that things done by the director in the name of, or for, the theatre company are taken to have been done by the theatre company.

Section 24D gives the director the power to delegate to appropriately qualified employees of the theatre company.

Section 24E effectively replaces most of existing section 18 and provides for the theatre company to employ the persons it considers necessary to perform its functions. The terms of employment are to be determined by the theatre company subject to any relevant award or industrial agreement. Employees are appointed under the *Royal Queensland Theatre Company Act 1970*, not under the *Public Service Act 1996*.

Section 24F effectively replaces existing section 29A which gives the theatre company the express ability to be involved in superannuation schemes. This provision will enable the theatre company to continue to take part in the scheme in which it currently takes part.

Section 25, the only section in new Part 2 Division 6, replaces and expands existing section 19 to enable the theatre company to establish committees in both rural and non-rural areas. The committees may include non-members. In appointing a person to a committee, the company must have regard to the person's ability to take part in the exercise of the powers delegated to the committee. The committees can exercise the powers delegated to them by the company under section 23.

Clause 69 inserts new Parts 4 (comprising sections 28 to 31F), 5 and 6.

The new parts are the same, and follow the same sequence, as new Parts 3A, 3B and 3C of the *Libraries and Archives Act 1988*. New Part 7 is also inserted which contains miscellaneous provisions.

Section 28 sets out the way in which the provisions of Part 4 apply if the Minister and the Treasurer are the same person. Anything required to be done by, or in relation to, both is taken to have been done by, or in relation to, both if done only by, or in relation to, the Minister.

Section 29 explains how the *Financial Management Standard 1997* and Part 4 interact. Part 4 prevails to the extent of any inconsistency. If something is required under Part 4 and something similar is required to be done under the *Financial Management Standard 1997*, the thing is taken to have been done for the purposes of both if done under Part 4.

Section 30 requires draft strategic and operational plans to be submitted to the Minister and copies to be provided to the Treasurer within the set time limits. The requirement that planning and funding documents be linked is set out in subsection (3). There is a requirement to seek to reach agreement on the draft plans.

Section 31 enables the Minister to ask the theatre company to reconsider its draft plans and to give the theatre company written directions in relation to the draft plans within certain time limits. The Minister must consult with the Treasurer where there are resource implications that are likely to require additional State funding.

Section 31A requires formal approval of the plans in writing by the Minister, but only after Parliamentary appropriations have been made. As the plans will contain funding documentation, this ensures the Minister does not agree funding matters until appropriations have been made. Formal approval reinforces the nature of the plans as performance agreements.

Section 31B covers the situation where plans have not been agreed before the start of the relevant financial year. In those circumstances, the draft plans last submitted, as modified by any Ministerial directions, are taken to be the theatre company's plans.

Section 31C enables the plans to be modified only with the written agreement of the Minister or by written Ministerial direction. Modifications that are likely to result in additional State funding must first be approved by the Treasurer.

Section 31D requires the strategic plan to contain the State's agreed triennial funding proposals.

Section 31E sets out matters to be included in the operational plan.

Section 31F requires the theatre company's information systems and physical assets strategic plans to be included in its strategic plan.

Sections 31G and 31H comprise the new Part 5.

Section 31G requires the theatre company to keep the Minister informed of its operations, give the Minister information required in order to monitor the theatre company's operations and advise the Minister of matters affecting its operations and performance.

Section 31H contains a reserve Ministerial power to instigate an investigation of the operations of the theatre company. The investigator is required to be appropriately qualified. The investigator is given wide powers to direct the theatre company in relation to the investigation.

Section 31I is the only section in new Part 6. It requires the annual report of the theatre company to contain summarised information regarding the operational plan of the company and of Ministerial directions given during the relevant financial year.

New Part 7 (comprising sections 31J to 31T) contains miscellaneous provisions which are very similar to, and follow the same sequence as, new sections 36 to 38I of the *Queensland Art Gallery Act 1987*.

Section 31J gives the Minister the power to delegate the Minister's powers under the Act and sets out some important exceptions.

Section 31K replaces existing section 17 and protects against civil liability members, and persons appointed to a committee established under section 25, who have acted honestly and without negligence. The liability attaches instead to the theatre company. The protection is subject to section 31L.

Section 31L operates to render personally liable any member who consents to the theatre company borrowing an amount that it is not authorised to borrow or repaying a borrowed amount that it was not authorised to borrow. There is an exception where the members believe, on grounds that are reasonable in all the circumstances, that the theatre company was authorised to borrow.

Section 31M provides that, for the application of the rule against perpetuities to gifts to the theatre company, the theatre company's purposes are charitable.

Section 31N exempts from stamp duty any transfer of property to the theatre company. This puts beyond doubt that neither the theatre company nor the third party transferee of property (including gifts) to the company are liable to pay stamp duty.

Section 31O declares the places occupied by the theatre company to be public places. This means that Acts conferring or imposing police powers or functions in respect of a public place or providing for offences committed in a public place apply to the places.

Section 31P sets out how the theatre company's seal can be witnessed on documents that are required to be signed under seal. This effectively replaces existing section 15.

Section 31Q sets out how documents that are not required to be signed under seal are to be signed by the theatre company.

Section 31R enables a court to make an order against a person found guilty of an offence, whether or not a conviction is recorded, to pay the theatre company the amount of any reward the company has paid or contracted to pay for information relating to the offence. The offence must relate to property of, or in the possession of, the theatre company.

Section 31S provides that offences under the Act can be instituted summarily under the *Justices Act 1886*.

Section 31T enables the theatre company to allege that property in its possession is property of the theatre company for the purposes of proceedings for offences committed in relation to the property.

Clause 70 provides for the omission of the by-law making power in existing section 32. The existing by-law making power deals with subject matter that are internal management matters for the theatre company to determine that need not constitute subordinate legislation, or matters that, under the fundamental legislative principles, are inappropriate for subordinate legislation or are adequately covered by the common law or other statute law.

Clause 71 inserts new Part 8 which contains saving and transitional provisions.

Section 35 defines the term “pre-amended Act”.

Section 36 ensures that the current members continue in office on the same terms.

Section 37 ensures that the current chairperson and deputy chairperson continue in those offices.

Section 38 preserves the appointments of the director and other employees on the same terms.

Section 39 enables renumbering of the next reprint of the *Royal Queensland Theatre Company Act 1970*.

Section 40 provides for the expiry of new Part 8 on 22 January 2000, the day that the last of the existing members’ current appointments expire.

PART 7 - REPEAL OF *QUEENSLAND CULTURAL CENTRE TRUST ACT 1976*

Division 1 - Repeal

Clause 72 repeals the *Queensland Cultural Centre Trust Act 1976*.

Division 2 - Validating, saving and transitional provisions

Subdivision 1 - Interpretation

Clause 73 defines the *Queensland Cultural Centre Trust Act 1976* as the “repealed Act”.

Clause 74 provides that the terms used in Part 7 of the Act are defined in the same way as in defined in the *Queensland Cultural Centre Trust Act*

1976.

Subdivision 2 - Validation of certain leases

Clause 75 defines the term “leases” as leases of parts of the Queensland Cultural Centre in favour of the Library Board of Queensland, Queensland Art Gallery Board of Trustees, Queensland Museum Board of Trustees, Queensland Performing Arts Trust and Royal Queensland Theatre Company.

Clause 76 validates the leases. The validation provision has retrospective effect.

Clause 77 effectively ensures that the effect of existing section 19(2) of the *Queensland Cultural Centre Trust Act 1976* is continued. Section 19(2) sets out the lessor’s and lessees’ respective obligations in relation to various parts of the leased land and buildings. Commercial leases normally contain similar provisions. *Clause 77* continues the effect of section 19(2) by deeming provisions with the same effect to be contained in the leases.

Clause 78 provides for the leases to be registered if lodged for registration and for no registration fee to be payable.

Subdivision 3 - Validation of certain licence agreements

Clause 79 defines the term “licences” to mean licence agreements in favour of two companies to carry on catering businesses in parts of the Queensland Cultural Centre.

Clause 80 validates the licences. The validation provision has retrospective effect.

Subdivision 4 - Dissolution of trust

Clause 81 dissolves the body corporate known as the Queensland Cultural Centre Trust (defined as the “trust” under the *Queensland Cultural*

Centre Trust Act 1976) and provides for the director of the trust to go out of office.

Clause 82 provides that the State is the successor in law of the trust.

Clause 83 provides for the trust's assets, including the trust's interest as trustee of the Queensland Cultural Centre, to become the assets of the State and for the trust's liabilities to be assumed by the State.

Clause 84 enables legal proceedings to which the trust is a party to be continued by or against the State.

Clause 85 provides for any existing instruments, including statutory instruments, referring to the trust to continue and for references in the instruments to the trust to be read as references to the State.

Clause 86 deals with instruments, such as wills or deed of trust, that have not yet taken effect and that refer to the Queensland Cultural Centre Trust. The references to the Queensland Cultural Centre Trust in these instruments are to be read as references to the State.

Clause 87 continues the effect of section 32(2) of the *Queensland Cultural Centre Trust Act 1976* which provides for the rule against perpetuities to apply to property given to the Queensland Cultural Centre Trust as though the purposes of the Queensland Cultural Centre Trust are charitable. *Clause 87* extends the application of the rule against perpetuities to the State to the extent that the State is the recipient of property under a trust as the successor of the Queensland Cultural Centre Trust.

Clause 88 preserves the legal status quo in the transition from the trust to the State.

Subdivision 5 - Miscellaneous

Clause 89 provides that section 20A of the *Acts Interpretation Act 1954* applies to Division 2. Section 20A of the *Acts Interpretation Act 1954* operates so that saving and transition provisions, such as those in Division 2, continue to have effect even if provisions are repealed or expire.

PART 8 - REPEAL OF THIS ACT

Clause 90 provides for the repeal of the *Arts Legislation Amendment Act 1997* on 31 December 1998. Because of the inclusion of the transition provisions in Part 7, the *Arts Legislation Amendment Act 1997* is not an amending Act in terms of section 22C of the *Acts Interpretation Act 1954* and will not, without clause 90 be automatically repealed.

SCHEDULE 1

MINOR AMENDMENTS OF *LIBRARIES AND ARCHIVES ACT 1988*

Clauses 1 to 17 contain minor amendments to the *Libraries and Archives Act 1988*.

SCHEDULE 2

MINOR AMENDMENTS OF *QUEENSLAND ART GALLERY ACT 1987*

Clauses 1 to 5 contain minor amendments to the *Queensland Art Gallery Act 1987*.

SCHEDULE 3

MINOR AMENDMENTS OF *QUEENSLAND MUSEUM ACT 1970*

Clauses 1 to 6 contain minor amendments to the *Queensland Museum Act 1970*.

SCHEDULE 4**MINOR AMENDMENTS OF *QUEENSLAND
PERFORMING ARTS TRUST ACT 1977***

Clauses 1 to 13 contain minor amendments to the Queensland Performing Arts Trust Act 1977.

SCHEDULE 5**MINOR AMENDMENTS OF *ROYAL QUEENSLAND
THEATRE COMPANY ACT 1970***

Clauses 1 to 5 contain minor amendments to the Royal Queensland Theatre Company Act 1970.

