



# Queensland Art Gallery Act 1987

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Queensland

# Queensland Art Gallery Act 1987

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title .....	5
1A	Object of Act .....	5
1B	Guiding principles for achieving the object .....	5
2	Definitions .....	6
<b>Part 2</b>	<b>The Queensland Art Gallery Board of Trustees</b>	
<b>Division 1</b>	<b>Constitution and membership</b>	
3	Board of trustees .....	7
4	Legal status of board .....	7
5	Board's relationship with State .....	8
6	Composition of board .....	8
7	Role of members .....	8
8	Eligibility for appointment .....	8
9	Chairperson and deputy chairperson of board .....	9
10	Duration of appointment .....	9
11	Conditions of appointment .....	9
<b>Division 2</b>	<b>Director</b>	
12	Appointment of director .....	10
12A	Minister to obtain board's approval .....	10
12B	Director is employee of the board .....	10
14	Duties of director .....	11
15	Director to attend board meetings .....	11
16	Things done by director .....	11
17	Delegation by director .....	11
<b>Division 3</b>	<b>Functions</b>	
19	Functions .....	11
<b>Division 4</b>	<b>Legal capacity and powers</b>	

Contents

---

20	Objects of division . . . . .	13
21	General powers . . . . .	13
22	Directions by Minister . . . . .	14
23	Restrictions on powers of board . . . . .	14
24	Persons having dealings with board etc. . . . .	15
25	Branches . . . . .	17
26	Disposal of works of art accepted by the board . . . . .	17
27	Use of proceeds from sale of other works of art . . . . .	18
28	Disposal of certain abandoned property . . . . .	18
29	Board must give notice of public auction . . . . .	19
30	Effect of sale or other disposal of certain works of art or other property 20	
<b>Division 5</b>	<b>Proceedings and business</b>	
31	Conduct of business . . . . .	20
32	Presiding at meetings . . . . .	20
33	Quorum . . . . .	21
34	Meetings . . . . .	21
35	Resolutions without meetings . . . . .	21
36	Minutes . . . . .	22
37	Conduct of affairs . . . . .	22
38	Disclosure of interests by members . . . . .	22
39	Voting by interested member . . . . .	22
40	Delegation by board . . . . .	23
<b>Division 6</b>	<b>Work performance arrangements and superannuation schemes</b>	
40A	Board may enter into work performance arrangements . . . . .	24
40B	Superannuation schemes . . . . .	25
<b>Division 7</b>	<b>Foundation committee</b>	
40C	Foundation committee . . . . .	25
40D	Function . . . . .	26
40E	Powers . . . . .	26
40F	Proceedings and business . . . . .	27
40G	Disclosure of interests by foundation committee members . . . . .	27
40H	Voting by interested foundation committee member . . . . .	27
<b>Part 3</b>	<b>Planning</b>	
<b>Division 1</b>	<b>Preliminary</b>	
41	How pt 3 applies if offices of Minister and Treasurer are held	

	by the 1 person . . . . .	29
42	Part additional to standard . . . . .	29
<b>Division 2</b>	<b>Strategic and operational plans for board</b>	
43	Draft strategic and operational plans . . . . .	29
44	Special procedures for draft strategic and operational plans . . .	30
45	Strategic and operational plans on agreement . . . . .	31
46	Strategic and operational plans pending agreement . . . . .	31
47	Modifications of strategic and operational plans . . . . .	31
48	State's agreed triennial funding . . . . .	32
49	Elements of operational plans . . . . .	32
50	Information systems and physical assets strategic plans . . . . .	33
<b>Part 4</b>	<b>Accountability matters</b>	
51	Board to keep Minister informed . . . . .	33
52	Monitoring and assessment of board . . . . .	33
<b>Part 5</b>	<b>Reporting</b>	
53	Annual report . . . . .	34
<b>Part 6</b>	<b>Miscellaneous</b>	
54	Delegation by Minister . . . . .	35
55	Protection from liability of members . . . . .	35
56	Illegal borrowing . . . . .	36
57	Application of certain Acts . . . . .	37
58	Application of rule against perpetuities . . . . .	37
59	Board is charitable institution . . . . .	37
60	Art gallery etc. taken to be public place . . . . .	37
61	Board's seal . . . . .	38
62	Authentication of documents . . . . .	38
63	Reward for information . . . . .	38
64	Proceedings for offences . . . . .	39
65	Description of property in proceeding . . . . .	39
66	Regulation-making power . . . . .	39
67	References to trustees of Queensland Art Gallery . . . . .	39
68	References to Queensland Art Gallery Act 1959 . . . . .	39
<b>Part 7</b>	<b>Transitional provisions</b>	
<b>Division 1</b>	<b>Transitional provisions for Arts Legislation Amendment Act 2003</b>	
69	Definition for div 1 . . . . .	40
70	Duration of certain appointments . . . . .	40

Contents

---

<b>Division 2</b>	<b>Transitional provisions for Statutory Bodies Legislation Amendment Act 2007</b>	
71	Rights and entitlements of particular employees . . . . .	40
72	Non-application of Industrial Relations Act 1999, s 167 . . . . .	41
73	Amending Act does not affect particular powers of board . . . . .	41
74	Continued application of repealed s 13 . . . . .	42
75	Application of Act to particular officers . . . . .	42
<b>Division 3</b>	<b>Transitional provisions for Vocational Education, Training and Employment and Other Legislation Amendment Act 2007</b>	
76	Definitions for div 3 . . . . .	42
77	Conditions on which present director holds office . . . . .	43
78	Current conditions may be amended . . . . .	43
79	No compensation payable . . . . .	44
<b>Division 4</b>	<b>Transitional and validation provisions for Queensland Art Gallery Amendment Act 2012</b>	
80	Definition for div 4 . . . . .	44
81	Gifts etc. to foundation taken to be gifts etc. to board . . . . .	44
82	Validation of membership of council of foundation . . . . .	44

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# Queensland Art Gallery Act 1987

## An Act to make provision with respect to the administration of the Queensland Art Gallery and for other purposes

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Queensland Art Gallery Act 1987*.

#### 1A Object of Act

The object of this Act is to contribute to the cultural, social and intellectual development of all Queenslanders.

#### 1B Guiding principles for achieving the object

The principles intended to guide the achievement of the object of the Act are the following—

- (a) leadership and excellence should be provided in the visual arts;
- (b) there should be responsiveness to the needs of communities in regional and outer metropolitan areas;
- (c) respect for Aboriginal and Torres Strait Islander cultures should be affirmed;
- (d) children and young people should be supported in their appreciation of, and involvement in, the visual arts;
- (e) diverse audiences should be developed;

- (f) capabilities for life-long learning about the visual arts should be developed;
- (g) opportunities should be developed for international collaboration and for cultural exports, especially to the Asia-Pacific region;
- (h) content relevant to Queensland should be promoted and presented.

## 2 Definitions

In this Act—

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

*Example of standing—*

a person's seniority in an entity

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

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

***chairperson*** means the chairperson of the board.

***commencement***—

(a) for part 7, division 1, see section 69; or

(b) for part 7, division 3—see section 76.

***current appointment***, for part 7, division 3, see section 76.

***current conditions***, for part 7, division 3, see section 76.

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

***director*** means the director of the art gallery.

***foundation committee*** see section 40C(1).

***foundation committee member*** means a person appointed as a member of the foundation committee under section 40C.

**government entity** see the *Public Service Act 2008*, section 24.

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

**operational plan**, of the board, means the board's operational plan developed under part 3 of this Act and the standard.

**pre-amended Act**, for part 7, division 3, see section 76.

**present director**, for part 7, division 3, see section 76.

**standard** means a financial and performance management standard under the *Financial Accountability Act 2009*.

**strategic plan**, of the board, means the board's strategic plan developed under part 3 of this Act and the standard.

**work performance arrangement** means an arrangement under which an employee of a government entity performs work for another government entity.

## Part 2                      The Queensland Art Gallery Board of Trustees

### Division 1                Constitution and membership

#### 3                      Board of trustees

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

#### 4                      Legal status of board

The board—

- (a) is a body corporate; and
- (b) has perpetual succession; and

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

## **5 Board's relationship with State**

The board represents the State.

## **6 Composition of board**

- (1) The board is to consist of the number of members appointed by the Governor in Council.
- (2) In appointing a member, regard must be had to the person's ability to contribute to the board's performance and the implementation of its strategic and operational plans.
- (3) A member must be appointed under this Act and not the *Public Service Act 2008*.

## **7 Role of members**

The role of the members includes the following—

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

## **8 Eligibility for appointment**

A person is not eligible for appointment as a member if the person is not able to manage a corporation because of the Corporations Act, Part 2D.6.

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## **9 Chairperson and deputy chairperson of board**

- (1) The Governor in Council must appoint a member as chairperson of the board.
- (2) The appointment may be made by the instrument appointing the person concerned as a member of the board.
- (3) The members must elect one of them as deputy chairperson of the board.
- (4) The members must act under subsection (3) whenever there is a vacancy in the office of deputy chairperson, including a vacancy occurring because the office has not been filled.
- (5) The chairperson or deputy chairperson may resign as chairperson or deputy chairperson by signed notice given to the Minister.
- (6) The chairperson or deputy chairperson may act under subsection (5) and remain a member.

## **10 Duration of appointment**

- (1) A member is appointed for the term (not more than 3 years) stated in the member's instrument of appointment.
- (2) The office of a member becomes vacant if—
  - (a) the member resigns by signed notice given to the Minister; or
  - (b) the person is not eligible to be appointed as a member; or
  - (c) the member's appointment is ended under subsection (3).
- (3) The Governor in Council may, at any time, end the appointment of all or any members for any reason or none.

## **11 Conditions of appointment**

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

[s 12]

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- (2) Except as decided by the Governor in Council, a member is not entitled to receive any payment, interest in property or other valuable consideration or benefit—
  - (a) by way of remuneration as a member; or
  - (b) in connection with resignation from office, or other termination of office, as a member, chairperson or deputy chairperson.

## **Division 2                      Director**

### **12            Appointment of director**

- (1) There is to be a director of the art gallery.
- (2) The director is to be appointed by the Governor in Council for the term, and on the conditions, stated in the instrument of appointment.
- (3) The stated term must not be longer than 5 years.

### **12A          Minister to obtain board's approval**

The Minister must not recommend the Governor in Council act under section 12(2) unless the recommendation has been approved by the board.

### **12B          Director is employee of the board**

Despite section 12—

- (a) the director is an employee of the board and not of the State; and
- (b) subject to the conditions of the director's appointment, the board may enter into a contract of employment with the director.

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**14 Duties of director**

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

**15 Director to attend board meetings**

- (1) This section applies if the director is not a member.
- (2) The director must attend all meetings of the board unless excused or precluded by the board.

**16 Things done by director**

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

**17 Delegation by director**

- (1) The director may delegate the director's powers (including a power delegated to the director by the board) to—
  - (a) an appropriately qualified employee of a department or another government entity performing work for the board under a work performance arrangement; or
  - (b) an appropriately qualified employee of the board.
- (2) Subsection (1) has effect subject to any directions by the board.

**Division 3 Functions**

**19 Functions**

- (1) The functions of the board are—
  - (a) to control, manage and maintain the art gallery and each branch thereof and all property in the possession of the board; and
  - (b) to develop the art gallery's collection of works of art; and

- (c) to minister to the needs of the community in any or all branches of the visual arts, including by—
    - (i) displaying works of art; and
    - (ii) promoting artistic taste and achievement through the illustration of the history and development of the visual arts; and
    - (iii) promoting and providing lectures, films, broadcasts, telecasts, publications and other educational or cultural instruction or material; and
    - (iv) promoting research; and
  - (d) to control and manage all land and premises vested in or placed under the control of the board; and
  - (e) to restore and repair works of art in the possession of the board; and
  - (f) to frame and package, and manufacture display materials for, works of art in the possession of the board; and
  - (g) to encourage artistic achievement by artists resident in Queensland; and
  - (h) to perform the functions given to the board under another Act; and
  - (i) to perform functions that are incidental, complementary or helpful to, or likely to enhance the effective and efficient performance of, the functions mentioned in paragraphs (a) to (h); and
  - (j) to perform functions of the type to which paragraph (i) applies and which are given to the board in writing by the Minister.
- (2) Before giving a function for subsection (1)(j), the Minister must consult with the board about the function.
- (3) In performing its functions the board must have regard to the object of, and guiding principles for, this Act.

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## Division 4                      Legal capacity and powers

### 20            Objects of division

The objects of this division include—

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

### 21            General powers

- (1) For performing its functions, the board has all the powers of an individual and may for example—
  - (a) enter into arrangements, agreements, contracts and deeds; and
  - (b) acquire, hold, deal with and dispose of property; and
  - (c) engage consultants; and
  - (d) appoint agents and attorneys; and
  - (e) charge, and fix terms, for goods, services, facilities and information supplied by it; and
  - (f) do anything else necessary or desirable to be done in performing its functions.
- (2) Without limiting subsection (1), the board has the powers given to it under this or another Act.
- (3) The board may exercise its powers inside and outside Queensland, including outside Australia.
- (4) In this section—  
*power* includes legal capacity.

## **22 Directions by Minister**

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

## **23 Restrictions on powers of board**

- (1) Section 21 has effect in relation to the board subject to any restrictions expressly imposed under this or another Act.
- (2) Section 21 also has effect in relation to the board subject to any restrictions expressly imposed by—
  - (a) any relevant strategic or operational plan of the board; or
  - (b) any relevant directions given to the board under section 22 by the Minister.
- (3) The board contravenes this section if it—
  - (a) exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
  - (b) does an act otherwise than in pursuance of its functions.
- (4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.
- (5) An officer of the board who is involved in the contravention contravenes this subsection.
- (6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).
- (7) The board or officer of the board is not guilty of an offence merely because of the relevant contravention.
- (8) In this section—

***officer***, of the board, means—

  - (a) a member; or
  - (b) the director; or

- (c) an employee of a department or another government entity performing work for the board under a work performance arrangement; or
- (d) an employee of the board.

*restriction* includes prohibition.

## **24 Persons having dealings with board etc.**

- (1) A person having dealings with the board is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board that the matters that the person is entitled to assume were not correct must be disregarded.
- (2) A person having dealings with a person who has acquired, or purports to have acquired, title to property from the board (whether directly or indirectly) is entitled to make the assumptions mentioned in subsection (3) and, in a proceeding in relation to the dealings, any assertion by the board or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.
- (3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—
  - (a) that, at all relevant times, this Act has been complied with; and
  - (b) that a person who is held out by the board to be an officer or agent of the board has been properly appointed and has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
  - (c) that an officer or agent of the board who has authority to issue a document on behalf of the board has authority to warrant that the document is genuine and that an officer or agent of the board who has authority to issue a certified copy of a document on behalf of the board has authority to warrant that the copy is a true copy; and

[s 24]

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- (d) that a document has been properly sealed by the board if—
    - (i) it bears what appears to be an imprint of the board's seal; and
    - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be an officer or agent of the board; and
  - (e) that the officers and agents of the board have properly performed their duties to the board.
- (4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—
- (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with the board, the person ought to know that the assumption would be incorrect.
- (5) If, because of subsection (4), a person is not entitled to make a particular assumption—
- (a) if the assumption is in relation to dealings with the board—subsection (1) does not apply to any assertion by the board in relation to the assumption; or
  - (b) if the assumption is in relation to an acquisition or purported acquisition from the board of title to property—subsection (2) does not apply to any assertion by the board or another person in relation to the assumption.
- (6) In this section—
- officer*, of the board, means—
- (a) a member; or
  - (b) the director; or

- (c) an employee of a department or another government entity performing work for the board under a work performance arrangement; or
- (d) an employee of the board.

## **25 Branches**

- (1) The board may establish branches of the art gallery.
- (2) However, the board may not contract with someone else to establish a branch without the approval of the Governor in Council.

## **26 Disposal of works of art accepted by the board**

- (1) This section applies if—
  - (a) a work of art is accepted by the board for exhibition or for another purpose; and
  - (b) the work is not collected by the person who gave it within 2 years after acceptance or, if the board has agreed to hold the work for a certain period, 2 years after the period ends.
- (2) Subject to any arrangement about the work between the board and the person, the board may—
  - (a) sell the work by public auction; or
  - (b) exchange the work for another work of art; or
  - (c) if the board considers on reasonable grounds that, because of the work's value, it is not viable to sell or exchange it—dispose of the work in another way.
- (3) However, if the board intends to sell, exchange or otherwise dispose of the work, it must give the person at least a month's written notice of its intention.
- (4) If the person's address is not known to the board, the notice may be given to the person by publishing it in a daily newspaper circulating generally in the State.

- (5) A notice under subsection (4) may form part of a notice under section 29.
- (6) If the board sells the work, the proceeds of sale must be applied in the following order—
  - (a) in payment of the reasonable expenses incurred in storing and selling the work;
  - (b) if there is an amount owing to an entity under a security interest registered for the work under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;
  - (c) the balance—
    - (i) must be held by the board for the person for at least 1 year after the sale; and
    - (ii) if the person does not claim the proceeds of sale within 1 year after the sale—may be used by the board in performing its functions.

## **27 Use of proceeds from sale of other works of art**

The proceeds of the sale by the board of any work of art other than under section 26 must, after deduction of the costs of and incidental to the sale, be used by the board for its functions.

## **28 Disposal of certain abandoned property**

- (1) This section applies if any property, other than a work of art to which section 26 applies—
  - (a) is found on any building or other place consisting of the art gallery or a branch of the art gallery; and
  - (b) there are reasonable grounds for suspecting the property has been abandoned by the person who last used it; and
  - (c) the property is unclaimed after 4 months.
- (2) The board may sell the property by public auction.

- 
- (2A) If the board sells the property, the proceeds of sale must be applied in the following order—
- (a) in payment of the reasonable expenses incurred in storing and selling the property;
  - (b) if there is an amount owing to an entity under a security interest registered for the property under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;
  - (c) the balance to be used by the board in performing its functions.
- (3) Despite subsection (2), if the board considers on reasonable grounds that, because of the property's value, it is not viable to sell it, the board may dispose of the property in another way.
- (4) Despite subsection (2), if the board considers on reasonable grounds that the property is in a dangerous condition or unfit for use for the purpose for which it was intended to be used, the board may cause it to be destroyed.

## **29 Board must give notice of public auction**

- (1) Before the board sells any property under section 26 or 28 it must first publish a notice in a daily newspaper circulating generally in the State.
- (2) The notice must—
  - (a) identify the property; and
  - (b) state the property is to be sold by auction; and
  - (c) state how the person entitled to the property may recover it before the auction; and
  - (d) state the time and place of the auction.

### **30 Effect of sale or other disposal of certain works of art or other property**

- (1) This section applies to the sale or other disposal of any property under section 26 or 28.
- (2) The sale or other disposal is valid against all persons.
- (3) A secured party can not enforce any security interest in the property or the proceeds of sale against—
  - (a) the board; or
  - (b) an entity to whom an amount is paid or payable under section 26(6)(a) or 28(2A)(a); or
  - (c) an entity to whom the property is sold.
- (4) Compensation is not recoverable against the board for the sale or other disposal.
- (5) In this section—

*secured party* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 10.

*security interest* has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.

## **Division 5 Proceedings and business**

### **31 Conduct of business**

Subject to this Act, the board shall conduct its business and proceedings at meetings in such manner as it determines from time to time.

### **32 Presiding at meetings**

- (1) The chairperson is to preside at all meetings at which the chairperson is present.
- (2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

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

### **33 Quorum**

- (1) A quorum of the board shall consist of a majority of the total number of members for the time being holding office.
- (2) A duly convened meeting of the board at which a quorum is present shall be competent to transact any business of the board and shall have and may exercise and perform all the powers and functions by this Act conferred or imposed upon the board.

### **34 Meetings**

- (1) The board may hold its meetings where and when it decides.
- (2) The board may hold meetings, or allow members to take part in meetings, by telephone, video link or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.
- (3) A member who takes part in a meeting under subsection (2) is taken to be present at the meeting.

### **35 Resolutions without meetings**

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

immediately advised of the matter and given a copy of the terms of the resolution.

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

### **36 Minutes**

The board must keep minutes of its proceedings.

### **37 Conduct of affairs**

- (1) The board shall exercise or perform a power or function by a majority vote of the members present at the meeting and voting on the business in question.
- (2) A member who, being present at a meeting and entitled to vote, abstains from voting shall be taken to have voted for the negative.
- (3) The person who is duly presiding at a meeting of the board, if the person is entitled to vote, shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

### **38 Disclosure of interests by members**

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

Maximum penalty—100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

### **39 Voting by interested member**

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

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

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—
  - (a) specifies the member, the interest and the matter; and
  - (b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.
- (3) If, because of this section, a member is not present at a meeting of the board for considering or deciding a matter, but there would be a quorum if the member were present, the remaining members present are a quorum for considering or deciding the matter at the meeting.

#### **40 Delegation by board**

The board may, by resolution, delegate its powers to—

- (a) a member; or
- (b) a committee of members; or
- (c) the director; or
- (d) the foundation committee; or
- (e) an appropriately qualified employee of a department or another government entity performing work for the board under a work performance arrangement; or
- (f) an appropriately qualified employee of the board.

## **Division 6**                      **Work performance arrangements and superannuation schemes**

### **40A Board may enter into work performance arrangements**

- (1) The board may enter into, and give effect to, a work performance arrangement with—
  - (a) the chief executive of a department; or
  - (b) the appropriate authority of another government entity.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
  - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
  - (b) the authorising of a person to exercise powers for the arrangement; and
  - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.
- (4) A person performing work for the board under a work performance arrangement entered into under subsection (1)—
  - (a) is not employed by the board; and
  - (b) remains an employee of the department or other government entity whose appropriate authority is a party to the arrangement.
- (5) To remove any doubt, it is declared that the board does not have power to employ a person performing work for the board under a work performance arrangement entered into under subsection (1).

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## **40B Superannuation schemes**

The board may—

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

## **Division 7 Foundation committee**

### **40C Foundation committee**

- (1) The board may establish a committee of the board (the *foundation committee*).
- (2) A person may be appointed as a member of the foundation committee whether or not the person is a member of the board.
- (3) However, at least 2 members of the foundation committee must be members of the board.
- (4) In appointing a person to the foundation committee, the board must have regard to the person's ability to take part in the exercise of—
  - (a) the foundation committee's powers under section 40E(3); and
  - (b) the powers delegated to the foundation committee under section 40.
- (5) The board may make available to the foundation committee any property the board considers appropriate to assist the foundation committee in performing its function.
- (6) The board must—
  - (a) decide the name of the foundation committee; and
  - (b) decide the conditions of membership to the foundation committee; and

- (c) endorse the constitution for the foundation committee.
- (7) The board may decide matters about the foundation committee that are not provided for under this Act.
- (8) The board may dissolve the foundation committee at any time.

#### **40D Function**

The function of the foundation committee is to raise funds to assist in the fulfilment of the board's functions by, for example—

- (a) encouraging gifts, donations, bequests and legacies of property for the benefit of the board; and
- (b) managing and investing property made available to the foundation committee by the board.

#### **40E Powers**

- (1) The foundation committee may exercise the powers delegated to it by the board under section 40.
- (2) In exercising the powers, the foundation committee is subject to the written directions of the board.
- (3) In performing its function, the foundation committee has the powers necessary to encourage gifts, donations, bequests and legacies of property for the benefit of the board.
- (4) In performing its function and exercising its powers, the foundation committee must not incur a debt.
- (5) For investing property made available to the foundation committee by the board, the foundation committee may use only the powers the board has for investing the property that the board has delegated to the foundation committee.

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#### **40F Proceedings and business**

- (1) The board may decide how the foundation committee is to conduct its business and proceedings at meetings (the *meeting procedure*).
- (2) To the extent the board does not decide the meeting procedure, the foundation committee may decide the meeting procedure.
- (3) To the extent the board and the foundation committee do not decide the meeting procedure, sections 32 to 37 apply as if a reference in those sections to the board were a reference to the foundation committee.

#### **40G Disclosure of interests by foundation committee members**

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

Maximum penalty—100 penalty units.

- (2) The disclosure must be recorded in the foundation committee's minutes.
- (3) A foundation committee member does not have a direct or indirect interest in a matter being considered, or about to be considered, by the foundation committee merely because the foundation committee member has made a gift, donation, bequest or legacy of property to the board.

#### **40H Voting by interested foundation committee member**

- (1) A foundation committee member who has a material personal interest in a matter being considered by the foundation committee must not—

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

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to the matter if the foundation committee has at any time passed a resolution that—
  - (a) specifies the foundation committee member, the interest and the matter; and
  - (b) states that the foundation committee members voting on the resolution are satisfied that the interest should not disqualify the foundation committee member from considering or voting on the matter.
- (3) If, because of this section, a foundation committee member is not present at a meeting of the foundation committee for considering or deciding a matter, but there would be a quorum if the foundation committee member were present, the remaining foundation committee members present are a quorum for considering or deciding the matter at the meeting.

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## **Part 3                      Planning**

### **Division 1                Preliminary**

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

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

#### **42            Part additional to standard**

- (1) This part is additional to and does not derogate from the standard.
- (2) However, if there is an inconsistency between this part and the standard, this part prevails to the extent of the inconsistency.
- (3) Also, if something is required to be done under this part and the same thing, or something to the same effect, is required to be done under the standard, compliance with this part is sufficient compliance with the standard.

### **Division 2                Strategic and operational plans for board**

#### **43            Draft strategic and operational plans**

- (1) The board must prepare and submit to the Minister for the Minister's agreement, draft strategic and operational plans for the board not later than 2 months before the start of each financial year.
- (2) In preparing the draft plans the board must consult with the Minister.

- (3) The board must give copies of the draft plans to the Treasurer at the same time as it gives the plans to the Minister.
- (4) The draft plans must—
  - (a) be in the form approved by the Minister; and
  - (b) provide for the things that a strategic plan and an operational plan for the board must provide for under the standard or this part; and
  - (c) be accompanied by—
    - (i) a statement of resource implications, and major policy changes, resulting from the proposed plan; and
    - (ii) any budget documents the board has prepared for the State's funding of the board.
- (5) The board and the Minister must try to reach agreement on the draft plans as soon as possible and in any event not later than 1 month before the start of the financial year.

#### **44 Special procedures for draft strategic and operational plans**

- (1) The Minister may return the draft strategic and operational plans to the board and ask it—
  - (a) to consider, or further consider, anything and deal with the thing in the draft plans; and
  - (b) to revise the draft plans in the light of its consideration or further consideration.
- (2) The board must comply with the request as a matter of urgency but subsection (1) does not require the board to amend the draft plans.
- (3) If the draft plans have not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by written notice, direct the board—
  - (a) to take specified steps in relation to the draft plans or either of them; or

- (b) to make specified modifications of the draft plans or either of them.
- (4) The board must immediately comply with the direction and include a copy of the direction in the plans, or the plan concerned.
- (5) The Minister may act under subsection (1) or (3) for a thing having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the implications.

#### **45 Strategic and operational plans on agreement**

- (1) When the draft strategic and operational plans have been agreed to in writing by the Minister, they become the board's strategic and operational plans for the relevant financial year.
- (2) However, the Minister must not agree to the plans for subsection (1) until Parliament appropriates amounts for the department for the relevant financial year.

#### **46 Strategic and operational plans pending agreement**

- (1) This section applies if the Minister and the board have not agreed to draft strategic and operational plans before the start of the relevant financial year.
- (2) The draft plans submitted, or last submitted, by the board to the Minister before the start of the financial year, with any modifications made by the board, whether before or after that time, at the direction of the Minister, are taken to be the board's strategic and operational plans.
- (3) Subsection (2) applies until draft strategic and operational plans become the board's strategic and operational plans under section 45.

#### **47 Modifications of strategic and operational plans**

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

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- (2) The Minister may, by written notice, direct the board to modify its strategic or operational plan.
- (3) The Minister may act under subsection (1) or (2) for a modification having resource implications for the board that are likely to require additional funding by the State only if the Minister has consulted with the Treasurer about the modification.

#### **48 State's agreed triennial funding**

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

#### **49 Elements of operational plans**

The board's operational plan must include the following—

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

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**50 Information systems and physical assets strategic plans**

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

## **Part 4 Accountability matters**

**51 Board to keep Minister informed**

- (1) The board must—
- (a) keep the Minister reasonably informed of the board's operations including its financial and operational performance and the achievement of its goals; and
  - (b) give to the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
  - (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of its goals under its strategic plan or significantly affect its performance in delivering the outputs under its operational plan—immediately inform the Minister of the matters and its opinion about them.
- (2) Subsection (1) does not limit the matters of which the board is required to keep the Minister informed, or limit the reports or information that the board is required, or may be required, to give to the Minister, by another Act.

**52 Monitoring and assessment of board**

- (1) The Minister may ask an appropriate person to investigate, and report to the Minister on, any matter relating to the board.
- (2) The person may give written directions to the board for the investigation.

- (3) Without limiting subsection (2), the person may direct the board—
  - (a) to give to the person any information about the board that the person considers necessary or desirable in connection with the investigation; and
  - (b) to permit other persons authorised by the person to have access to specified records and other documents about the board that the person considers necessary or desirable in connection with the investigation; and
  - (c) to take steps the person considers necessary or desirable for the investigation.
- (4) The board must ensure that any direction given to it under this section is complied with.
- (5) Before reporting on the investigation to the Minister, the person must consult with the board about the report.
- (6) In this section—

*appropriate person* means an appropriately qualified officer of the department, or another appropriately qualified person, other than an employee of a department or another government entity performing work for the board under a work performance arrangement.

## Part 5 Reporting

### 53 Annual report

The board's annual report under the *Financial Accountability Act 2009* must include—

- (a) a summary of the operational plan for the relevant financial year; and
- (b) a summary of any modifications of the operational plan during the relevant financial year; and

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

## **Part 6                      Miscellaneous**

### **54            Delegation by Minister**

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified officer of the department.
- (2) However, the Minister may not delegate any of the following powers—
  - (a) the power to give the board a function for section 19(1)(i);
  - (b) the power to direct the board under sections 22, 44(3) and 47(2);
  - (c) the power to agree in writing to, and agree in writing to modifications of, the board's strategic and operational plans;
  - (d) the power to ask a person to investigate and report under section 52(1).

### **55            Protection from liability of members**

- (1) A member is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member, the liability attaches instead to the board.
- (3) This section is subject to section 56.

- (4) In this section—  
*member* includes a foundation committee member.

## 56 Illegal borrowing

- (1) Subsection (2) applies if the board or the foundation committee borrows an amount that it is not authorised to borrow under an Act.
- (2) The members who consented to the borrowing are jointly and severally liable to repay the amount, and any interest on it, to the person from whom it was borrowed and the person may recover the amount and interest by action as for a debt in a court of competent jurisdiction.
- (3) Subsection (4) applies if an amount is appropriated from moneys of the board or the foundation committee to repay an amount mentioned in subsection (1) or interest on the amount.
- (4) The members who consented to the appropriation are jointly and severally liable to refund the amount, together with interest on the amount at a rate decided by the Treasurer, and the Treasurer may recover the amount and interest by action as for a debt in a court of competent jurisdiction.
- (5) If the Treasurer brings an action under subsection (4)—
  - (a) the Treasurer is entitled to costs as between solicitor and client; and
  - (b) any amount recovered must be paid to the board.
- (6) Subsection (2) does not apply to a member if, at the time the member consented to the borrowing, the member believed on grounds that were reasonable in all the circumstances that the board or the foundation committee was authorised under an Act to borrow the amount.
- (7) Subsection (4) does not apply to a member if—
  - (a) subsection (2) does not apply to the member because of subsection (6); or
  - (b) the member did not consent to the borrowing.

- (8) In this section—  
*member* includes a foundation committee member.

### **57 Application of certain Acts**

- (1) The board is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B, sets out the way in which the board's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **58 Application of rule against perpetuities**

For the application of the rule against perpetuities to gifts to the board, the board's purposes are taken to be charitable.

### **59 Board is charitable institution**

The board is a charitable institution in relation to a gift, donation, bequest or legacy to the board under a trust instrument or other document.

### **60 Art gallery etc. taken to be public place**

- (1) This section applies for any Act conferring or imposing on a police officer powers or functions in respect of a public place or providing for offences committed in a public place.
- (2) A building or another place consisting of the art gallery or a branch of the art gallery is taken to be a public place.
- (3) Subsection (2) must not be construed to prevent or limit the imposition by the board of conditions of entry for the building or other place.

## **61 Board's seal**

- (1) The board's seal is to be kept in the custody directed by the board and may be used only as authorised by the board.
- (2) The attaching of the seal to a document must be witnessed by—
  - (a) 2 or more members; or
  - (b) at least 1 member and the director; or
  - (c) a member or the director, and 1 or more other persons authorised by the board.

## **62 Authentication of documents**

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

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

## **63 Reward for information**

- (1) The board may offer and pay a reward to a person who gives the board information about an offence it believes or suspects is committed in relation to its property or property in its possession.
- (2) If a court finds a person guilty of the offence and the board has paid, or agreed to pay, the reward for information about the offence, the court may order the person to pay to the board the amount of the reward.
- (3) The amount is a debt owing by the person to the board.
- (4) Subsection (2)—

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

**64 Proceedings for offences**

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

**65 Description of property in proceeding**

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

**66 Regulation-making power**

The Governor in Council may make regulations under this Act.

**67 References to trustees of Queensland Art Gallery**

In an Act or document, a reference to the trustees of the Queensland Art Gallery may, if the context permits, be taken to be a reference to the board.

**68 References to Queensland Art Gallery Act 1959**

In an Act or document, a reference to the *Queensland Art Gallery Act 1959* may, if the context permits, be taken to be a reference to this Act.

## **Part 7                      Transitional provisions**

### **Division 1                      Transitional provisions for Arts Legislation Amendment Act 2003**

#### **69            Definition for div 1**

In this division—

*commencement* means commencement of this section.

#### **70            Duration of certain appointments**

- (1) This section applies to a person who was a member of the board immediately before the commencement.
- (2) Despite section 10(1), the person's appointment as a member continues until the day the appointment would have ended under this Act as in force immediately before the commencement, unless earlier ended under section 10(3).

### **Division 2                      Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

#### **71            Rights and entitlements of particular employees**

- (1) This section applies to a person who—
  - (a) becomes a public service employee; and
  - (b) was an employee of the board—
    - (i) immediately before the commencement of this section; and
    - (ii) immediately before becoming a public service employee.
- (2) On becoming a public service employee—

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- (a) the person keeps all rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, that—
    - (i) have accrued or were accruing to the person as an employee of the board; and
    - (ii) would have accrued to the person if the board had never become an employer under the *Workplace Relations Act 1996* (Cwlth); and
  - (b) if the person is a member of a superannuation scheme—
    - (i) the person keeps all entitlements accrued or accruing to the person as a member of the scheme; and
    - (ii) the person's membership of the scheme is not affected.
  - (3) Without limiting subsection (2), for working out the person's rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, employment of the person as a public service employee is a continuation of employment of the person by the board.

## **72 Non-application of Industrial Relations Act 1999, s 167**

For the purpose of the *Industrial Relations Act 1999*, section 167, a department or public service office does not become the successor of any part of the business of the board only because the department or public service office becomes the employer of persons previously employed by the board.

## **73 Amending Act does not affect particular powers of board**

Nothing in the *Statutory Bodies Legislation Amendment Act 2007*, part 5, affects the powers of the board under section 21.

**74 Continued application of repealed s 13**

- (1) Section 13, as in force immediately before the commencement of this section, continues to apply in relation to persons employed by the board under the section immediately before the commencement while that employment continues.
- (2) This section does not limit section 73.

**75 Application of Act to particular officers**

- (1) This section applies to a person who—
  - (a) immediately before the commencement of this section, was an officer mentioned in section 12(3) as in force immediately before that commencement; and
  - (b) on the commencement, continues to perform work for the board.
- (2) For sections 17, 23, 24, 40 and 52, until the chief executive of the department enters into a work performance arrangement with the board the person is taken to be an employee of a department or other government entity performing work for the board under a work performance arrangement.
- (3) If, immediately before the commencement of this section, a delegation of a power to the person was in force under section 17 or 40, as the section was in force immediately before the commencement, the delegation continues in force until it is revoked.

**Division 3 Transitional provisions for Vocational Education, Training and Employment and Other Legislation Amendment Act 2007**

**76 Definitions for div 3**

In this division—

*commencement* means the commencement of the provision in which the term is used.

*current appointment*, of the present director, means the director's appointment by the Governor in Council under the pre-amended Act, section 12(1), on 17 May 2007.

*current conditions* see section 77(1).

*pre-amended Act* means this Act as in force before the commencement.

*present director* means the person holding office as the director at the commencement.

## **77 Conditions on which present director holds office**

- (1) Subject to this division, the present director continues to hold the office on the conditions (the *current conditions*) applying under the pre-amended Act, section 12(2), immediately before the commencement.
- (2) The present director's current appointment ends and the director ceases holding the office at the end of 16 May 2012.
- (3) Subsection (2) does not prevent the present director ceasing to hold the office at an earlier time under the current conditions or those conditions as amended.
- (4) If the present director ceases to hold the office under subsection (3), the director's current appointment also ends.

## **78 Current conditions may be amended**

- (1) The board may, with the Governor in Council's approval, amend the current conditions.
- (2) However, subject to section 77(3), the conditions can not be amended in a way that would interfere with the operation of section 77(2).

**79 No compensation payable**

Compensation may not be claimed by, and is not payable to, the present director, whether under the current conditions, those conditions as amended or otherwise, because of the operation of section 77(2).

**Division 4 Transitional and validation provisions for Queensland Art Gallery Amendment Act 2012**

**80 Definition for div 4**

In this division—

*foundation* means the Queensland Art Gallery Foundation constituted with the approval of the board under the constitution of the Queensland Art Gallery Foundation.

**81 Gifts etc. to foundation taken to be gifts etc. to board**

- (1) A gift, donation, bequest or legacy to, or for the benefit of, the foundation—
  - (a) is taken to be a gift, donation, bequest or legacy to, or for the benefit of, the board; and
  - (b) may be dealt with by the board as if the gift, donation, bequest or legacy had been to, or for the benefit of, the board.
- (2) Subsection (1) applies whether the gift, donation, bequest or legacy is made or has effect before or after the commencement of this section.

**82 Validation of membership of council of foundation**

Despite clause 19 of the constitution of the foundation, the membership of the council of the foundation is taken to comply, and to have always complied, with the constitution.