

TASMANIA

**CULTURAL AND CREATIVE INDUSTRIES BILL
2017**

CONTENTS

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown

PART 2 – PROVISION OF ASSISTANCE

5. Minister may approve assistance
6. Approved programs
7. Application for assistance
8. Establishment of register of experts
9. Appointment of expert panel
10. Expert panel to consider applications
11. Offence to attempt to influence panel
12. Expert panel to regulate own proceedings
13. Confidentiality
14. Conflict of interest
15. Protection from liability
16. Delegation
17. Remuneration

PART 3 – DISSOLUTION OF BOARD

- 18. Dissolution of Board
- 19. Transfer of assets and liabilities
- 20. Construction of documents
- 21. Legal proceedings and related matters
- 22. Tax exemption

PART 4 – MISCELLANEOUS

- 23. Expenses of Act
- 24. Regulations
- 25. Administration of Act
- 26. Legislation repealed

SCHEDULE 1 – LEGISLATION REPEALED

CULTURAL AND CREATIVE INDUSTRIES BILL 2017

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
18 October 2017

*(Brought in by the Premier, the Honourable William Edward
Felix Hodgman)*

A BILL FOR

An Act to establish a system of peer review of applications for assistance in the cultural and creative industries, to repeal the *Tasmanian Arts Advisory Board Act 1975* and for related matters

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Cultural and Creative Industries Act 2017*.

2. Commencement

This Act commences on 1 January 2018.

Cultural and Creative Industries Act 2017
Act No. of

s. 3

Part 1 – Preliminary

3. Interpretation

In this Act –

application means an application for assistance made under section 7;

approved program means a program approved under section 6(7);

Board means the Tasmanian Arts Advisory Board established under section 2 of the *Tasmanian Arts Advisory Board Act 1975*;

commencement day means the day on which this Act commences;

expert panel means an expert panel appointed under section 9;

member means a member of an expert panel.

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – PROVISION OF ASSISTANCE

5. Minister may approve assistance

- (1) The Minister may, for the purpose of supporting the creative and cultural industries, approve the provision to any person or organisation of assistance of such nature and on such terms and conditions as the Minister considers suitable in the circumstances.
- (2) Without prejudice to the generality of the provisions of subsection (1), assistance may take the form of –
 - (a) grants or subsidies; or
 - (b) loans; or
 - (c) payments to meet in whole or in part the losses incurred in the carrying out of any operation or activity; or
 - (d) equity investment; or
 - (e) scholarships; or
 - (f) any other initiative or means of assistance that the Minister considers appropriate.
- (3) The powers conferred on the Minister by this section to approve the provision of assistance to any person or organisation include power to enter into and carry out, on behalf of the Crown, an agreement for the commissioning of any work

Cultural and Creative Industries Act 2017
Act No. of

s. 6

Part 2 – Provision of Assistance

to be carried out by that person or organisation, or for the purchase or acquisition of any such work or of any rights with respect to such work, and, on behalf of the Crown, to deal with any property, or exercise any rights, vested in the Crown pursuant to any such agreement.

- (4) A loan under this Act is to be at such rate of interest as the Treasurer may approve and on such security and on such terms and conditions in respect of repayment and otherwise as the Minister determines.
- (5) The Minister, by instrument in writing, may delegate to a State Service employee or State Service officer the power to approve the provision of assistance, subject to any conditions specified in the instrument of delegation.

6. Approved programs

- (1) The Secretary, if requested to do so by the Minister, is to develop programs to assist in the support and development of the cultural and creative industries.
- (2) The Secretary may consult with an expert panel, or any person or body he or she considers appropriate, in the development of a program.
- (3) Without limiting the matters that a program may include, a program may include any or all of the following:

Cultural and Creative Industries Act 2017
Act No. of

Part 2 – Provision of Assistance

s. 6

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- (a) details of the area of the cultural and creative industries that is the subject of the program;
 - (b) information to enable potential applicants to determine their eligibility to apply for assistance under the program;
 - (c) the criteria on which an application for assistance will be assessed;
 - (d) the type and level of assistance that may be provided;
 - (e) whether or not an application, or group of applications, will be considered by an expert panel;
 - (f) the terms and conditions on which any assistance under the program may be provided;
 - (g) such other matters that the Secretary considers appropriate.
- (4) The Secretary is to submit a draft of a program to the Minister for approval.
- (5) If a program submitted under subsection (4) provides for an application, or a group of applications, to be considered without an expert panel, the Secretary must provide the Minister with written reasons as to why an expert panel is not required.
- (6) The Minister must not approve a program under which the consideration of an application or

Cultural and Creative Industries Act 2017
Act No. of

s. 7

Part 2 – Provision of Assistance

group of applications is to be undertaken without an expert panel unless he or she is satisfied, based on the reasons provided by the Secretary, that an expert panel is not required.

- (7) Subject to subsection (6), the Minister may approve a program with, or without, alterations.
- (8) Without limiting subsection (7), the Minister may alter a draft program to provide that an application or group of applications for assistance be assessed by an expert panel.

7. Application for assistance

A person or organisation may apply to the Minister for the provision of assistance in accordance with the requirements of an approved program.

8. Establishment of register of experts

- (1) The Minister is to establish a register of experts comprising those persons who, in the opinion of the Minister –
 - (a) are experienced, independent, suitably qualified and well respected within the cultural and creative industries sector; or
 - (b) have relevant technical expertise.
- (2) In selecting persons for the register, the Minister is to take into account the need to ensure diversity of backgrounds, experience and qualifications among those selected.

Cultural and Creative Industries Act 2017
Act No. of

Part 2 – Provision of Assistance

s. 9

9. Appointment of expert panel

- (1) Subject to section 6, the Secretary is to appoint an expert panel to consider an application or group of applications.
- (2) The Secretary is to appoint an expert panel by appointing an uneven number of persons to be members of the expert panel.
- (3) A person appointed under subsection (2) –
 - (a) is to be selected from the register of experts established under section 8; and
 - (b) is to be a person who, in the opinion of the Secretary, has experience or expertise relevant to the consideration of the application.
- (4) The Secretary must not direct, or attempt to influence, an expert panel in the performance or exercise of the functions or powers of the expert panel under this Act.

10. Expert panel to consider applications

- (1) An expert panel is to consider an application and recommend to the Minister –
 - (a) whether assistance should be provided; and
 - (b) the amount and form of any such assistance.

Cultural and Creative Industries Act 2017
Act No. of

s. 11

Part 2 – Provision of Assistance

- (2) In considering an application under this Act, an expert panel –
 - (a) must assess the application on the basis of merit and in accordance with the requirements of any approved program to which the application relates; and
 - (b) may seek advice from the Department.
- (3) The Secretary may authorise a State Service officer or State Service employee to provide advice or secretarial assistance to an expert panel.
- (4) If an expert panel is unable to agree on an assessment of an application, the panel may refer the application to the Secretary for his or her assessment.
- (5) If an application is referred to the Secretary, he or she is to consider the application and recommend to the Minister –
 - (a) whether assistance should be provided; and
 - (b) the amount and form of any such assistance.

11. Offence to attempt to influence panel

A person must not attempt to influence, by any means –

- (a) the Secretary in appointing an expert panel under section 9(1); or

Cultural and Creative Industries Act 2017
Act No. of

Part 2 – Provision of Assistance

s. 12

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- (b) a panel, or a member of a panel, in the consideration of an application for assistance, unless his or her advice is sought in accordance with section 10(2)(b).

Penalty: Fine not exceeding 50 penalty units.

12. Expert panel to regulate own proceedings

- (1) Subject to this Act, an expert panel may regulate its own proceedings with regard to the consideration of applications and the provision of recommendations for assistance.
- (2) Without limiting subsection (1), an expert panel is to take minutes of its meetings and keep records of its recommendations.

13. Confidentiality

A member of an expert panel, or a person employed or engaged in work related to the affairs of an expert panel, must not divulge information that comes to his or her knowledge by virtue of that office or position except –

- (a) in the course of, and for a purpose related to, carrying out the duties of that office or position; or
- (b) as may be authorised by or under this Act or any other Act; or
- (c) when required to do so by a court or tribunal constituted by law.

Cultural and Creative Industries Act 2017
Act No. of

s. 14

Part 2 – Provision of Assistance

Penalty: Fine not exceeding 20 penalty units.

14. Conflict of interest

- (1) A member of an expert panel must not consider an application if he or she has a conflict of interest.
- (2) For the purposes of subsection (1), a member has a conflict of interest if he or she knows or reasonably ought to know that his or her consideration of an application could confer a direct or indirect financial benefit on the member or an immediate relative, personal friend or close business associate of the member.
- (3) A member must declare a conflict of interest as soon as practicable after becoming aware of it.

Penalty: Fine not exceeding 20 penalty units.

15. Protection from liability

- (1) A member of an expert panel does not incur any personal liability for any act done, or purported or omitted to be done, by the member in good faith in the exercise or performance or purported exercise or performance of any responsibilities relating to or arising from his or her role as a member of the expert panel.
- (2) Subsection (1) does not preclude the Crown or a member of an expert panel from incurring a liability that the Crown or the member would, but for that subsection, incur.

Cultural and Creative Industries Act 2017
Act No. of

Part 2 – Provision of Assistance

s. 16

16. Delegation

The Secretary may delegate any of his or her powers or functions, other than this power of delegation, to a State Service employee or State Service officer within the Department.

17. Remuneration

A member or an expert panel is entitled to be paid, in relation to his or her carrying out the functions of the expert panel, the remuneration and expenses (including travelling and subsistence allowances) determined by the Secretary.

Cultural and Creative Industries Act 2017
Act No. of

s. 18

Part 3 – Dissolution of Board

PART 3 – DISSOLUTION OF BOARD

18. Dissolution of Board

On the commencement day, the Tasmanian Arts
Advisory Board is dissolved.

19. Transfer of assets and liabilities

(1) On the commencement day –

- (a) the assets of the Board vest in the Crown;
and
- (b) the liabilities of the Board become the
liabilities of the Crown.

(2) State tax is not payable in respect of any
document prepared, or transfer or transaction
done, to give effect to subsection (1).

20. Construction of documents

(1) In this section –

document means a document, or part of a
document, that –

- (a) was in force immediately before
the commencement day; and
- (b) contains a reference to the Board;
and
- (c) relates to an asset or liability of
the Board.

Cultural and Creative Industries Act 2017
Act No. of

Part 3 – Dissolution of Board

s. 21

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- (2) Unless the context or subject matter of a document otherwise requires, on and after the commencement day a reference in the document to the Board is taken to be or to include a reference to the Crown.

21. Legal proceedings and related matters

On and after the commencement day –

- (a) any legal or other proceeding instituted by or against the Board before, and pending on, the commencement day may be continued by or against the Crown; and
- (b) any legal or other proceeding that could have been instituted by or against the Board to enforce an obligation that was required to be performed, or a right that had accrued, before the commencement day may be instituted by or against the Crown; and
- (c) any judgment or order of a court obtained before the commencement day by or against the Board and not executed or satisfied before the commencement day may be enforced by or against the Crown; and
- (d) a document relating to any legal or other proceeding that has been served on or by the Board before the commencement day is taken, where appropriate, to have been served on or by the Crown; and

Cultural and Creative Industries Act 2017
Act No. of

s. 22

Part 3 – Dissolution of Board

- (e) any contract or arrangement entered into by the Board before the commencement day is taken to be a contract or arrangement entered into by the Crown.

22. Tax exemption

The following are not liable to any State tax:

- (a) an instrument to which the Crown is a party by virtue of this Act;
- (b) the Crown, in so far as it may, but for this section, be liable to any State tax in relation to a matter to which this Act relates.

PART 4 – MISCELLANEOUS

23. Expenses of Act

- (1) Moneys required for the making of loans under this Act are to be, as may be provided by Parliament, issued out of the Loan Fund, and any moneys received by way of repayment of any such loan, or of payment of interest on any such loan, are to be paid to the Treasurer and dealt with as if the loan were an advance made by the Treasurer out of that Fund.
- (2) Subject to subsection (1), the expenses of the Minister and an expert panel under this Act are to be, as may be provided by Parliament, paid out of the Consolidated Revenue, or, if at the time of the payment the *Financial Management (Consequential and Transitional Provisions) Act 2017* is in force, out of the Public Account.

24. Regulations

The Governor may make regulations for the purposes of this Act.

25. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for the Arts; and

Cultural and Creative Industries Act 2017
Act No. of

s. 26

Part 4 – Miscellaneous

- (b) the department responsible to the Minister for the Arts in relation to the administration of this Act is the Department of State Growth.

26. Legislation repealed

The legislation specified in Schedule 1 is repealed.

Cultural and Creative Industries Act 2017
Act No. of

sch. 1

SCHEDULE 1 – LEGISLATION REPEALED

Section 26

Tasmanian Arts Advisory Board Act 1975 (No. 18 of 1975)