

## CLAUSE NOTES

### *Tasmanian Museum and Art Gallery Bill 2017*

#### PART I- PRELIMINARY

- Clause 1 Short title.
- Clause 2 This clause provides for the Bill to commence on a day or days to be proclaimed.
- Clause 3 This clause defines certain terms for the purposes of the Bill.
- Clause 4 This clause ensures that the Bill binds the Crown.
- Clause 5 This clause establishes the objectives of the Tasmanian Museum and Art Gallery. These objectives are to set the overarching framework for the operation of the Tasmanian Museum and Art Gallery and provide guidance to the Board of Trustees and the Minister in determining and then implementing the strategic direction of the institution.

#### PART 2 – BOARD OF TRUSTEES OF TASMANIAN MUSEUM AND ART GALLERY

- Clause 6 This clause ensures that the Board established under the *Tasmanian Museum Act 1950* continues under the name of the Board of Trustees of the Tasmanian Museum and Art Gallery. The Board is an instrumentality of the Crown and has legal personality.
- Clause 7 This clause specifies the membership of the Board. There are to be at least five but not more than seven members, all of whom are to be appointed by the Minister. The Minister is able to seek nominations from The Royal Society of Tasmania in making appointments to the Board. Further, the Minister can also seek nominations from other persons the Minister believes will enable the Minister to appoint a person to ensure the Board has at least one member who can represent the Tasmanian community. The Minister is to ensure that the Board consists of persons who, together, have expertise in research relevant to the collection of material under the control, management and stewardship of the Board, in addition to qualifications or experience in and expert knowledge of the areas set out in 7(3)(a) to (i) inclusive.
- Clause 8 This clause sets out the functions of the Board. There are three categories of functions that the Board will need to undertake. The first category relates to

strategic functions, including determining and ensuring the delivery of the strategic direction of the Tasmanian Museum and Art Gallery. The strategic direction is to be in accordance with the objectives of the Tasmania Government as set by the Minister.

The second category applies to managerial and administrative functions. These relate to the overall management of the Tasmanian Museum and Art Gallery as a public institution, and includes the management of the finances of the institution, as well as other specific matters, such as the buildings of the Tasmanian Museum and Art Gallery.

The third category applies to the stewardship functions of the Board. These relate to the care, development, improvement, promotion and display of the collection of material under the control, management and stewardship of the Board of Trustees. It also extends to the support and promotion of historical, cultural and research into, and of, the collection.

In performing its functions, the Board is required to have constant regard to the objectives of the Tasmanian Museum and Art Gallery as established under Clause 5.

#### **Clause 9**

This clause sets out the powers of the Board. These powers extend to determining matters relating to the access and use of the premises, as well as the collection of material under the control, management and stewardship of the Board of Trustees. The Board has the power to set reasonable fees and charges for matters in relation to its responsibilities.

The Board is limited in exercising its powers in relation to its land or buildings, and is to seek and acquire the approval of the Minister prior to selling or mortgaging any of its buildings.

In exercising its powers, the Board is required to have constant regard to the objectives of the Tasmanian Museum and Art Gallery as established under Clause 5.

#### **Clause 10**

This clause states that the Board can establish committees to provide advice and assist the Board to undertake its responsibilities. The Board can discharge, alter or reconstitute any committee. Membership of committees is determined by the Board, and may include the Director or staff of the Tasmanian Museum and Art Gallery. Committees act in an advisory capacity only, and are to comply with any written directions provided to them by the Board. Committees must keep minutes and may, except as provided for in the Act, regulate their own proceedings.

#### **Clause 11**

This clause provides protection from liability for any member of the Board when acting in good faith in exercising or performing any of their responsibilities as Board members. The Crown and the Board are not precluded from incurring liability.

- Clause 12** This clause specifies that the Board can delegate any powers or functions to a member of the Board, or the Director of the Tasmanian Museum and Art Gallery (TMAG). The power of delegation cannot be delegated. Powers or functions cannot be delegated to an advisory committee.
- Clause 13** This clause sets out the methods by which the Board may obtain material for the TMAG collections.
- Clause 14** This clause specifies that the Board is able to accept or decline gifts, loans or deposits of material in relation to the discharge of its responsibilities. This is one of the methods by which the Board may acquire material for the collection.
- The rule against perpetuities and the *Duties Act 2001* do not apply to gifts accepted by the Board.
- Clause 15** This clause provides a process and set of requirements for dealing with unclaimed material that may, at any time, have been left with the Board; or where there is uncertainty over the provenance of that material; or the provenance is known but the material has been abandoned or forgotten about.
- The Board is to make reasonable enquires to locate the owner of the material.
- If the Board is able to locate the owner within 6 months (the prescribed period), the Board is to give the owner reasonable opportunity to reclaim it. Then the Board may release the material.
- Where, within the 6 month prescribed period, the Board locates the owner but there may be competing ownership claims, the Board may hold that material pending any resolution and the subsequent legal settlement of those claims establishing the owner of the material. Then the Board may release the material.
- Where, within the 6 month prescribed period, the Board locates a person who may be the owner, the Board is to give that person a reasonable opportunity to confirm their ownership and reclaim the material. Then the Board may release the material.
- The Board may retain or dispose of the material by a method it thinks best if: the Board cannot locate the owner within the 6 month prescribed period; or the owner does not want to, or does not bother to reclaim the material within the 6 month prescribed period; or competing claims are not resolved within a further 12 months (the secondary prescribed period); or if the Board does locate the owner and the owner fails to establish, or does not bother to establish, their right to ownership and so reclaim the material within the 12 month secondary prescribed period.
- The Board (subject to a contrary court order) if it takes a decision to retain or dispose of the material in accordance with the preceding paragraph that material is taken to be permanently abandoned by the owner and it becomes vested in the Board, and all other person's rights, titles and interest in the material, except the Board's, are forfeited.

Nothing in this clause prevents the Board from disposing of the material if it is too hazardous or degraded for the Board to hold, or the Board is required by law to dispose of it.

No action lies against the Board if it holds, retains, releases or disposes of the material in accordance with these provisions, or if that material is damaged, deteriorates or devalues while the Board holds the material.

The Board is to establish administrative procedures to assist implementation of these provisions. These procedures are to be approved by the Minister and the Board is to act in accordance with those approved procedures.

## Clause 16

This clause specifies that a Head of Agency from defined agencies is not to dispose of material that is, or might be, of major artistic, cultural, heritage, scientific technological, archaeological or other importance to the State (material of State significance) without first notifying the Board of the intention to dispose of that material.

A Head of Agency is to presume material is of State significance unless the Head of Agency is satisfied that the material is not of State significance. This clause does provide that a Head of Agency may, at any time, ask the Board to determine whether any material held by the Agency may be of State significance and the Board may make or arrange a determination of that material.

The purpose of the notice is give the Board the opportunity to assess the material and determine if it is of value to the TMAG collection.

The Board is to assess that material, and determine if it is to be acquired for the TMAG collection within 30 business days of being notified by a Head of Agency.

During this assessment period, Head of Agencies are to keep the material, provide information on the material to the Board, if so requested and allow the Board, TMAG staff, or any consultant experts working for TMAG to freely and reasonably access the material to assess it.

The Board can apply to the Minister to extend the assessment period by a further 15 business days if the 30 business day period does not give the Board sufficient time to assess the material.

After the assessment period, the Board must, no later than 7 business days after that period has concluded, notify the Head of Agency that the material is required for the TMAG Collection. Where such a notice is given the Head of Agency is to arrange for the transfer of the material to the Board on such terms as they both agree, or if they cannot agree, as the Minister directs.

Where the Board decides not to acquire the material it needs to notify the Head of Agency of that decision within 7 business days after the end of the assessment period. In this case, the Agency may then dispose of the material.

If the Board fails to provide any notice to the Head of Agency within 7 business days after the end of the assessment period the Agency may then dispose of the material.

The Board can make recommendations to the Head of Agency about the suitable disposal of material, which the Head of Agency may have regard to when disposing of material.

This clause does not affect certain laws, including the *Archives Act 1983*, or any specific contractual obligations on the disposal of material by an agency.

Heads of Agency are to take reasonable steps to inform their officers and employees concerning this clause.

**Clause 17** This clause establishes the grounds on which the Board may dispose of material from the TMAG collections and the means by which that disposal may be effected.

The clause provides some limits on the Board. The Board may only proceed to have material destroyed if that material is of no or negligible market value, or the material must be destroyed for safety, legal, public policy or other compelling reasons.

If the value of material exceeds a certain value, known as the threshold value, and it is to be disposed by any method other than by destruction, then the Board is to notify the Minister of its intention to dispose of that material and the reasons behind that intention.

In these circumstances, the Board cannot dispose of the material unless the Minister approves the disposal. The Minister may require further information to make this decision. If the Minister does not approve the disposal reasons are to be provided to the Board.

The Board may notify disposals and any explanations of them in its annual report, or by any other notices the Board thinks appropriate.

**Clause 18** This clause specifies that the Minister, after consulting with the Board, is to determine the threshold value that triggers the requirements of the Board to seek the approval of the Minister to dispose of material under clause 16. The Minister is to notify the Board of the determination of the threshold value. The determination of the threshold value can be done through a Ministerial direction, or in the Minister's statement of expectations. The Minister may vary a determination from time to time.

**Clause 19** This clause specifies that the Minister, no later than 3 months before the end of a financial year, may provide the Board with the Minister's expectations of the Board. In doing so the Minister has to have regard to the objectives of the Tasmanian Museum and Art Gallery as provided for in Clause 5, and the Board's obligations in respect of those objectives.

There are limitations on the Minister. The Minister cannot set expectations that relate to the Board's stewardship functions. Nor can the Minister set expectations that controls or influences the exercise of certain powers by the Board; or the content of any event or activity that the Board may undertake; or how the Board may deal with a gift provided to the Board.

The Board is required to discharge its responsibilities consistent with the Minister's Statement of Expectations.

The Minister may amend or revoke a Statement of Expectations at any time, and a statement can be published either by the Minister, the Board, or by both parties.

#### Clause 20

This clause specifies that the Minister is able to provide directions to the Board regarding the discharge of the Board's responsibilities. All directions are to be in writing. The Board is to comply with a written direction issued by the Minister.

There are limitations on the Minister. In making a direction the Minister has to have regard to the objectives as provided for in Clause 5, and the Board's obligations in respect of those objectives.

The Minister cannot issue a direction that conflicts with a Ministerial Statement of Expectations in force at the particular time that a direction is made.

The Minister cannot issue a direction that controls or influences the Board's stewardship functions. Nor can the Minister issue a direction that relates to the exercise of certain powers by the Board; or the content of any event or activity that the Board may undertake; or how the Board may deal with a gift provided to the Board.

#### Clause 21

This clause requires the Board to prepare and submit to the Minister for approval every three years a strategic plan. The strategic plan can be for at least three years or longer, as determined by the Board. This clause sets out the matters that the strategic plan is to include

The Board is to prepare a strategic plan with regard to the objectives as set out in Clause 5 and its obligation in respect of those objectives.

A strategic plan must be consistent with any Ministerial Statement of Expectations and any Ministerial directions in effect at the time of the strategic plan's development.

The Board may consult with the Minister or any other person in preparing a strategic plan.

The Board is to submit a draft strategic plan to the Minister for approval.

The Minister may require the Board to amend and resubmit a draft strategic plan. The Minister may exercise this power more than once.

The strategic plan takes effect for the period established in the plan on the approval of the Minister.

The Board is required to act in accordance with the strategic plan over the period that it is in effect.

The Board may prepare an amendment to a strategic plan at any time. Amendments to a strategic plan will need to be approved by the Minister and take effect when the Minister has approved the amendment

The Board may publish a strategic plan.

- Clause 22** This clause specifies that the Board is required, on or before 31 March in each financial year, to prepare a business plan for the following financial year.
- A business plan must be prepared with regard to the objectives as set out in Clause 5, and the obligations of the Board in respect of those objectives.
- A business plan must be consistent with any strategic plan in effect, as well as any Ministerial Statement of Expectations and any Ministerial directions in effect at the time of the business plan's development.
- A business plan is to set out how the Board intends to meet its business and financial objectives for the forthcoming financial year in the context of, and in relation to, the strategic plan in effect at the time of the business plan's development; or for the next strategic plan, if a strategic plan is in its final year.
- The business plan is to be submitted to the Minister for approval. The Minister may require the Board to amend a draft business plan. The Minister may exercise these powers more than once.
- A business plan takes effect on the approval of the Minister.
- The Board is required to act in accordance with the business plan over the financial year it is in effect.
- The Board may prepare an amendment to a business plan at any time. Amendments to a business will need to be approved by the Minister and take effect when the Minister has approved the amendment.
- The Board may publish a business plan.

### PART 3 – ADMINISTRATION

- Clause 23** This clause provides for the establishment of the position of Director of the Tasmanian Museum and Art Gallery. This is not a statutory office. It is a state service position whose occupant has a specific appointment. The occupant's appointment and employment is made in accordance with, and is subject to, the *State Service Act 2000*.
- Clause 24** This clause states that the Director is to be responsible to the Board of Trustees for the general management and administration of the Tasmanian Museum and Art Gallery.
- The Director is to act as the secretary of the Board and is to attend meetings of the Board as its secretary, unless the Board for a particular meeting or for certain business decides that the Director is not to attend in that capacity.
- The Director must comply with directions provided by the Board and discharge any responsibilities that may be delegated to the Director by the Board.
- The Director is also to discharge any other legislative responsibilities.
- The Board and the Director can agree on the Board's expectations of the Director in regard to the discharge of the Director's responsibilities.

- Clause 25** This clause allows persons who are employed under the *State Service Act 2000* to be employed or appointed for the purposes of the legislation. These persons are subject to, and must comply with, all directions given to them in respect of their responsibilities by the Director of the Tasmanian Museum and Art Gallery.
- Clause 26** This clause allows for the Treasurer's Instructions made under the *Financial Management and Audit Act 1990* to apply to the Board.
- Clause 27** This clause allows the Board to open bank accounts.
- Clause 28** This clause determines the funds of the Board consist of moneys provided by the State, moneys received by the Board in discharging its responsibilities and moneys received from other sources.
- Clause 29** This clause provides that, subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, the Board may invest certain funds of the Board and use the interest consistent with sound commercial practice and any instructions issued by the Minister.
- Clause 30** This clause states that the Board is required to keep accounting records in accordance with this clause for a period of not less than 7 years.
- Clause 31** This clause states that the Board is to prepare an annual report each financial year that must include at least the matters set out in 31(2). The annual report is to be provided to the Minister by 31 October in each financial year, with the Minister to lay a copy of the report in each House of Parliament within 10 sitting days of receiving the report.

#### **PART 4 – MISCELLANEOUS**

- Clause 32** This clause allows the Board and the Royal Society to make arrangements with the Royal Society of Tasmania as to what services and facilities the Board may make available to them within the premises of the Tasmanian Museum and Art Gallery.
- Clause 33** This clause enables the Board of Trustees to establish or participate in an incorporated association or a body corporate, to be known as the TMAG Foundation or any other name as approved by the Minister.

The main purpose of this body would be to raise and receive donations to further the TMAG objectives as set out in section 5 of the Act.

The TMAG Foundation must not operate so as to hinder or detract from the TMAG objectives.

- Clause 34** This clause allows for the making of regulations.
- Clause 35** This clause specifies that until the administration of the legislation is determined by an order under the *Administrative Arrangements Act 1990* the administration of the legislation is assigned to the Minister for the Arts, with the Department of State Growth being the department responsible to the Minister for the administration of the legislation.
- Clause 36** This clause enables the transitional provisions of Schedule 3 to have effect.
- Clause 37** This clause provides the legislation to be amended as set in Schedule 4 is amended.
- Clause 38** This clause provides that the legislation set out in Schedule 5 of this Act is repealed.

## SCHEDULE 1 – MEMBERSHIP OF THE BOARD

- Clause 1** This clause establishes the terms of office for members of the Board.
- Clause 2** This clause specifies that persons who hold an office and who must devote their time to their employment are not disqualified to be a member of the Board and can accept remuneration for being a Board member.
- Clause 3** This clause specifies that the *State Service Act 2000* does not apply to a Board member in their capacity as a Board member.  
A person employed in the state service may be a Board member and continue to be employed in the state service.
- Clause 4** This clause specifies that the Board is to be remunerated and paid allowances as determined by the Minister. A State service employee or officer is not entitled to remuneration or allowances unless approved by the Minister administering the *State Service Act 2000*. A member holds office on the conditions of their instrument of employment where these are not provided for in the Act.

- Clause 5            This clause sets out the circumstances upon which a member of the Board vacates office.
- Clause 6            This clause sets out the provisions for the filling of vacancies to the Board.
- Clause 7            This clause validates proceedings of the Board notwithstanding that there might be a vacancy, or a defect in the appointment of a member, or a person has been disqualified, or is incapable of being a member of the Board.
- Clause 8            This clause sets out matters, unless there is evidence to the contrary, not required to be proved in any proceedings by, or against, the Board.

## SCHEDULE 2 – MEETINGS OF THE BOARD

- Clause 1            This clause establishes the requirements for convening of meetings of the Board.
- Clause 2            This clause provides that the chairperson, unless absent, is to preside over meetings of the Board.
- Clause 3            This clause sets out the requirements for the formation of a quorum to transact business of the Board and the voting of Board members at Board meetings.
- Clause 4            This clause specifies the conduct of meetings of the Board. The Board may invite any person to a meeting to advise or inform the Board on any matter. The clause also sets out the means by which Board members may be permitted to participate in Board meetings.
- Clause 5            This clause sets out requirements for addressing absences of Board members from meetings of the Board.
- Clause 6            This clause requires the Board to keep accurate minutes of its meetings.
- Clause 7            This clause sets out the requirements for Board members for the management of declarations of direct or indirect pecuniary interests in matters before the Board, including the circumstances in which disclosure is not required.

**Clause 8** This clause specifies that, except as set out in the legislation, the Board can regulate its own proceedings.

**Clause 9** This clause sets out matters, unless there is contrary evidence, not required to be proved in any proceedings by, or against, the Board.

### SCHEDULE 3 – TRANSITIONAL PROVISIONS

**Clause 1** This clause provides that former Board members' appointments are terminated but they are eligible for nomination and appointment to the new Board if they are qualified.

**Clause 2** This clause specifies that any employees appointed and employed under the former Act are appointed and employed for the purposes of this Act.

**Clause 3** This clause specifies that any reference to the Board in a will, bequest or other document on or before the commencement of this Act is taken to be a reference to the new Board established by this Act.

**Clause 4** This clause allows for all acts or things done, omitted to be done, or suffered by the Board to be taken as though they were done, omitted to be done, or suffered by the new Board.

**Clause 5** This clause specifies that all property vested in the former Board by the *Tasmanian Museum Act 1950* and all other property of the former Board remains property of the new Board.

All liabilities of the former Board remain liabilities of the new Board.

**Clause 6** This clause provides that any accounts of the former Board are to be taken to be accounts maintained by the new Board.

**Clause 7** This clause provides that any proceedings or judgements by or against the former Board may be continued or enforced by or against the new Board. It also provides that any documents for legal or other proceedings served on the former Board are taken to be served on the new Board. Further, any contract made or entered into, but not performed or discharged by the former Board, is a contract made or entered into by the new Board.

**Clause 8** This clause specifies that any by-laws, rules or orders made under the *Tasmanian Museum Act 1950* and still in place are rescinded by this provision.

**Clause 9** This clause provides that section 15 of this Act applies to any unclaimed material in the possession of the Board before the commencement of this Act.

**Clause 10** This clause provides that a strategic plan of the Board in place before this Act commences can, if the Minister approves, become the initial strategic plan of the Board as required by this Act.

If an existing strategic plan is approved to be the initial strategic plan it is taken to have been prepared and approved in accordance with section 20, and subsections 12, 13 and 14 apply to that plan.

However, the Board is able to prepare a new strategic plan at any time during the operation of a strategic plan in place before this Act commences.

#### **SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS**

Details the consequential amendments to other legislation to be made by this Act.

#### **SCHEDULE 5 – LEGISLATION REPEALED**

Details the legislation to be repealed by this Act.