

CLAUSE NOTES

Cultural and Creative Industries Bill 2017

PART 1 – PRELIMINARY

- Clause 1 Short title.
- Clause 2 This clause provides for the Bill to commence on 1 January 2018.
- Clause 3 This clause defines certain terms for the purposes of the Bill.
- Clause 4 This clause ensures that the Bill binds the Crown.

PART 2 – PROVISION OF ASSISTANCE

- Clause 5 This clause provides the Minister with the power to approve the provision of assistance for the purposes of supporting cultural and creative industries. It sets out the forms of assistance that may be provided.
- It provides powers to the Minister to enter into agreements to commission works, acquire or purchase works or any rights in such works for and on behalf of the Crown. The Minister is provided with the power to deal with any property or exercise any right vested in the Crown under any such agreement.
- Any interest rates on loans made under the Act are as approved by the Treasurer and on security and with any terms and conditions as the Minister may determine.
- It provides that the Minister may delegate, in writing, the power to approve the provision of assistance to a State Service Employee or State Service officer subject to any conditions as set out in the delegation.
- Clause 6 This clause provides that if the Minister requests the Secretary of the Department administering the Act is to develop programs to assist the support and development of the cultural and creative industries.
- The Secretary may consult with any person or body the Secretary considers appropriate in developing a program. The clause sets out what may be included in program.
- The Secretary is to submit a draft program to the Minister for approval. If a program is submitted that provides for applications not to be considered without an expert panel the Secretary must provide written reasons why an expert panel is not required.
- The Minister must not approve a program where applications are not to be considered without an expert panel unless the Minister is satisfied of the reasons provided by the Secretary that an expert panel is not required.

The Minister may approve a program with or without alteration.

Without limiting this power, the Minister may alter a draft program to provide that applications for assistance are to be assessed by an expert panel.

Clause 7 This clause provides that a person may apply to the Minister for assistance in accordance with the requirements of an approved program.

Clause 8 This clause provides that the Minister is to appoint independent, suitably qualified well respected persons within the creative and cultural industries sector, or with the relevant technical expertise, to a register of experts. In appointing persons to the register the Minister is to take account of the diversity of backgrounds, experience and qualifications of the appointees.

Clause 9 This clause provides that the Secretary is to appoint an expert panel to consider applications and is to appoint an uneven number of persons to an expert panel.

An expert panel is to be selected from the register of experts who, in the opinion of the Secretary, have the relevant expertise or experience to consider the application.

The Secretary is not to direct or attempt to influence an expert panel in the exercise of its powers and functions as a panel under the Act.

Clause 10 This clause set out the functions and powers of an expert panel to consider applications and recommend to the Minister whether assistance should be provided by the Minister and the amount and form of that assistance.

This clause also provides that in considering applications an expert panel must assess applications on merit and in accordance with the requirements of an approved program to which the applications relate.

A panel may also seek advice from the Department administering this Act in considering an application.

This clause also allows the Secretary to authorise State Service employees or officers to provide secretarial services to an expert panel

This clause provides that if a panel cannot agree on an assessment of an application the panel can refer that application to the Secretary to be assessed by the Secretary.

If an application is referred by a panel to the Secretary, the Secretary can consider the application and recommend to the Minister whether assistance should be provided by the Minister and the amount and form of that assistance.

Clause 11 This clause provides that it is an offence for any person to influence the Secretary in appointing a panel under 9(1), or a panel, or a member of a panel

in considering an application for assistance unless his or her advice is sought in accordance with section 10(2)(b) of this Act.

Clause 12 This clause allows an expert panel, subject to the provisions of the Act, to regulate its own proceedings with regard to the assessment of applications and the provision of recommendations. Without limiting this, a panel is to take minutes of its meetings and keep records of their recommendations.

Clause 13 This clause provides that an expert panel member or a person employed or working in affairs related to an expert panel must not divulge information that comes into their knowledge except: in the course of, or related to, the duties of the office or position; or as they may be authorised by this or any other Act; or if they are required to do so by a court or tribunal constituted by law.

Clause 14 This clause provides that a person must not consider an application if that person has a conflict of interest.

A person has a conflict of interest if they know, or reasonably ought to have known, that their consideration of an application could confer a direct or indirect financial benefit on them or a close associate. A person must declare a conflict of interest as soon as practicable after they become aware of it.

Clause 15 This clause provides that an expert panel member does not incur any personal liability for any act done or purported or omitted to be done in good faith by the member in the exercise, performance or purported exercise or performance of any of their responsibilities as a member of an expert panel.

This clause also provides that the Crown or an expert panel is not precluded from incurring a liability notwithstanding the protection from personal liability afforded to a member of an expert panel.

Clause 16 This clause provides that the Secretary may delegate any of the Secretary's powers and functions, except the power of delegation, to a State Service employee or officer with the Department administering this Act.

Clause 17 This clause provides that an expert panel member is to be paid remuneration and expenses for the functions they carry out as an expert panel, as determined by the Secretary.

PART 3 – DISSOLUTION OF BOARD

Clause 18 This clause dissolves the Tasmanian Arts Advisory Board on the commencement day of this Act.

Clause 19 This clause transfers the assets and liabilities vested in the Tasmanian Arts Advisory Board to the Crown.

The clause also provides that State tax is not payable in respect of any document, transfer or transaction to give effect to the transfer of assets or liabilities from the Board to the Crown.

- Clause 20 This clause defines the term ‘document’ in this section and provides that, on the commencement day of the Act, in any document, unless otherwise set out in the context or subject matter of that document, a reference to the Board is taken to be or to include a reference to the Crown.
- Clause 21 This provides that on and after the commencement day of this Act: any pending legal proceeding by or against the Tasmanian Arts Advisory Board may be continued by or against the Crown; and any legal proceedings that could have been instituted by or against the Board to enforce an obligation or right may be instituted by or against the Crown; and any judgement or court order obtained against the Board and not executed or satisfied may be enforced by or against the Crown; any document relating to any legal or other proceedings served on or by the Board is taken, where appropriate, to have been served on the Crown; and any contract or other arrangement entered into by the Board is taken to be a contract or arrangement entered into by the Crown.
- Clause 22 The clause provides that the Crown is not liable to pay State tax in relation to an instrument to which the Crown is a party and would, but for this provision, be liable to pay State tax.

PART 4 - MISCELLANEOUS

- Clause 23 This clause provides that money for making of loans under this Act are to be issued from the Loan Fund and any repayments or payment of interest are to be paid to the Treasurer.
- Subject to subsection (1) the expenses of the Minister and are to be paid out of the Consolidated Revenue.
- Clause 24 This clause provides that regulations may be made for the purposes of this Act.
- Clause 25 This clause specifies that until the administration of the legislation is made under 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 26 This clause gives effect to Schedule 1 of this Act.

SCHEDULE 1 – LEGISLATION REPEALED

This sets out the legislation repealed by this Act.