**AUSTRALIA COUNCIL ACT 1975**

**No. 11 of 1975**

An Act to establish a Council for Purposes connected with the Promotion of the Arts, and to make Provision for related Matters.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

**Short title.**

**1.** This Act may be cited as the Australia Council Act 1975.

**Commencement.**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Interpretation.**

**3.** In this Act, unless the contrary intention appears—

“arts”. includes creative and interpretative expression through theatre, literature, music, visual arts, film and crafts;

“Board” means a Board established under this Act;

“Council” means the Council established by this Act.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF

THE COUNCIL

**Establishment of Council.**

**4.** There is established by this Act a Council by the name of the Australia Council.

**Functions of Council.**

**5.** The functions of the Council are—

(a) to formulate and carry out policies designed—

(i) to promote excellence in the arts;

(ii) to provide, and encourage the provision of, opportunities for persons to practise the arts;

(iii) to promote the appreciation, understanding and enjoyment of the arts;

(iv) to promote the general application of the arts in the community;

(v) to foster the expression of a national identity by means of the arts;

(vi) to uphold and promote the right of persons to freedom in the practice of the arts;

(vii) to promote the knowledge and appreciation of Australian arts by persons in other countries;

(viii) to promote incentives for, and recognition of, achievement in the practice of the arts; and

(ix) to encourage the support of the arts by the States, local governing bodies and other persons and organizations; and

(b) to do anything incidental or conducive to the performance of any of the foregoing functions.

**Powers of Council.**

**6.** (1) Subject to this Act, the Council has power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, has power—

(a) to enter into contracts;

(b) to erect buildings;

(c) to occupy, use and control any land or building owned or held under lease by Australia and made available for the purposes of the Council;

(d) to acquire, hold and dispose of real or personal property;

(e) to accept gifts, devises and bequests made to the Council, whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Council upon trust;

(f) to make grants or loans of money, and to provide scholarships or other benefits, on such conditions as it thinks fit;

(g) to co-operate with the States and local governing bodies and with other persons and organizations concerned with the arts; and

(h) to do anything incidental to any of its powers.

(2) Notwithstanding anything contained in this Act, any moneys or property vested in the Council upon trust shall be dealt with in accordance with the powers and duties of the Council as trustee.

(3) The Council may perform its functions and exercise its powers outside Australia for the benefit of Australia or Australians.

**Delegation.**

**7.** (1) Subject to any direction of the Minister, the Council shall, by resolution, delegate to a Board such of its functions and powers as, in the opinion of the Council, can appropriately be performed by that Board.

(2) A function or power so delegated may be performed or exercised by the Board in accordance with the resolution.

(3) A delegation under this section is revocable by resolution of the Council and does not prevent the performance of a function or the exercise of a power by the Council.

PART III—CONSTITUTION AND MEETINGS OF THE COUNCIL

**Incorporation of Council.**

**8.** (1) The Council—

(a) is a body corporate, with perpetual succession;

(b) shall have a common seal; and

(c) may sue and be sued in its corporate name.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Council affixed to a document and assume that it was duly affixed.

**Membership of Council.**

**9.** (1) The number of members of the Council shall be not less than 18 nor more than 24.

(2) Subject to sub-section (1), the Council shall consist of—

(a) the Chairman;

(b) the Chairman of each Board;

(c) 3 persons, each of whom is an officer of a Department of the Australian Public Service or an officer or member of an authority of Australia, being a Department or authority having responsibilities in relation to matters to which the functions of the Council relate; and

(d) such number of other persons as the Governor-General thinks fit, of whom the majority shall consist of persons who practise the arts or are otherwise associated with the arts.

(3) The members of the Council referred to in paragraphs (2)(a), (c) and (d) shall be appointed by the Governor-General

(4) The members of the Council shall be part-time members.

(5) The performance of the functions or the exercise of the powers of the Council is not affected by reason only of—

(a) there being a vacancy in the office of Chairman of the Council; or

(b) the number of members of the Council falling below 18 for a period of not more than 6 months.

**Term of office.**

**10.** (1) Subject to this Act, a member of the Council appointed under paragraph 9(2)(a) or (d) holds office for such period, being not less than 1 year nor more than 3 years, as the Governor-General specifies in the instrument of his appointment, but is eligible for re-appointment.

(2) A person shall not hold office under sub-section (1) for a continuous period exceeding 4 years.

(3) A person who has held office under sub-section (1) for a continuous period of 4 years is not eligible for re-appointment for a term of office commencing within 12 months after the expiration of that period.

(4) For the purposes of the application of sub-section (3) in relation to the eligibility of a person for appointment or re-appointment as the Chairman of the Council, any period of service by that person as a member of the Council otherwise than as Chairman shall be disregarded.

(5) A member of the Council appointed under paragraph 9(2)(c) holds office during the pleasure of the Governor-General.

**Remuneration and allowances.**

**11.** (1) A member of the Council shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he shall be paid such remuneration as is prescribed.

(2) Subject to the Remuneration Tribunals Act 1973-1974 a member of the Council shall be paid such allowances as are prescribed.

(3) A reference in this section to a member of the Council does not include a reference to a person appointed under paragraph 9(2)(b) or (c).

**Leave of absence.**

**12.** The Council may grant leave of absence to a member upon such terms and conditions as the Council determines.

**Resignation.**

**13.** A member of the Council may resign his office by writing signed by him and delivered to the Governor-General.

**Termination of office.**

**14.** The Governor-General may remove a member of the Council appointed under paragraph 9 (2) (a) or (d) from office by reason of misbehaviour or physical or mental incapacity or if he is absent without leave of the Council from 3 consecutive meetings of the Council.

**Acting Chairman.**

15. (1) The Minister may appoint a person to act as Chairman of the Council—

(a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of an Acting Chairman; and

(b) at any time terminate such an appointment.

(3) Where a person is acting as Chairman in accordance with paragraph (1)(b) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of an Acting Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) While the appointment of an Acting Chairman remains in force, he has, and may exercise, all the powers and shall perform all the functions of the Chairman.

(6) At any time when a person who is not a member of the Council is acting as Chairman, he shall be deemed to be a member of the Council for the purposes of sub-sections 17(4) and (7) and section 19.

(7) The validity of anything done by an Acting Chairman shall not be called in question on the grounds that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

**Deputies.**

**16.** (1) A member of the Council, being the Chairman of a Board, may, with the approval of the Minister, appoint a member of the Board to be his deputy.

(2) A member of the Council referred to in paragraph 9(2)(c) may, with the approval of the Minister, appoint a person, other than a member of the Council, to be his deputy.

(3) A member of the Council referred to in sub-section (1) or (2) may revoke the appointment of a person as his deputy, but the revocation is not effective until the member has given notice of it by writing signed by him and delivered to the Minister.

(4) The deputy of a member is entitled, in the event of the absence of the member from a meeting of the Council, to attend that meeting and, when so attending, shall be deemed to be the member of whom he is the deputy.

(5) A person appointed under this section, other than a person appointed or employed under the Public Service Act 1922-1974 or an officer or member of an authority of Australia, shall be paid such remuneration and allowances as are determined by the Minister.

**Meetings.**

**17.** (1) The Council shall hold such meetings as are necessary for the performance of its functions.

(2) The meetings shall be convened by the Chairman.

(3) Where the Minister requests the Chairman to do so, the Chairman shall forthwith convene a meeting.

(4) At a meeting a quorum is constituted by a majority of the members of the Council for the time being holding office.

(5) The Chairman shall preside at all meetings at which he is present.

(6) If the Chairman is not present at a meeting, the members present shall elect one of their number to preside at the meeting.

(7) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

**Co-opted members.**

**18.** (1) Subject to this section, the Council may appoint a person to be a co-opted member of the Council for such period, not exceeding 12 months, as the Council determines.

(2) A co-opted member may take part in the deliberations of the Council, but has no power to vote.

(3) For the purposes of the provisions of this Act, other than this section, a co-opted member shall not be regarded as a member of the Council.

(4) Not more than 2 persons shall be co-opted members of the Council at any one time.

(5) There shall be paid to a co-opted member of the Council, other than a person appointed or employed under the Public Service Act 1922-1974 or an officer or member of an authority of Australia, on account of travelling expenses incurred by reason of his attendance at meetings of the Council, such allowances as are prescribed.

**Disclosure of interest.**

**19.** (1) A member of the Council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of more than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Council, and the member—

(a) shall not take part after the disclosure in any deliberation or decision of the Council with respect to that matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Council for any such deliberation or decision.

PART IV—BOARDS

**Establishment of Boards.**

**20.** For the purposes of this Act, the Minister shall, by notice published in the Gazette, establish such number of Boards, and assign to them such designations, as he thinks fit.

**Functions and powers of Boards.**

**21.** A Board shall have such functions and powers as are delegated to it under section 7.

**Membership of Boards.**

**22.** (1) A Board, other than the Board referred to in sub-section (2), shall consist of a Chairman and not fewer than 7 nor more than 10 other members.

(2) If a Board is established by the name of the Aboriginal Arts Board, that Board shall consist of a Chairman and not fewer than 9 nor more than 14 other members.

(3) A majority of the members of a Board for the time being shall be persons who practise the arts or are otherwise associated with the arts.

(4) The members of a Board shall be appointed by the Minister, and shall be part-time members.

(5) A Board shall from time to time publicly advertise, in such manner as it determines, for persons who wish to be appointed as members of the Board to submit their names for consideration, and shall at all times maintain a list of names so submitted.

(6) In selecting persons to be appointed as members of a Board, the Minister shall give consideration to the list of names maintained by the Board under sub-section (5).

(7) Sub-section (6) does not apply in relation to the first appointment after the establishment of a Board of the minimum number of members required by sub-section (1) or (2), as the case may be.

(8) The performance of the functions or the exercise of the powers of a Board is not affected by reason only of—

(a) there being a vacancy in the office of Chairman of the Board; or

(b) the number of members of the Board falling below the minimum number required by sub-section (1) or (2), as the case may be, for a period of not more than 6 months.

**Term of office.**

**23.** (1) Subject to this Act, a member of a Board holds office for such period, being not less than 1 year nor more than 3 years, as the Minister specifies in the instrument of his appointment, but is eligible for reappointment.

(2) A member of a Board shall not hold office as a member of that Board for a continuous period exceeding 4 years.

(3) A member of a Board who has held office as a member of that Board for a continuous period of 4 years is not eligible for reappointment for a term of office commencing within 12 months after the expiration of that period.

(4) For the purposes of the application of sub-section (3) in relation to the eligibility of a person for appointment or re-appointment as the Chairman of a Board, any period of service by that person as a member of that Board otherwise than as Chairman shall be disregarded.

**Remuneration and allowances.**

**24.** (1) A member of a Board shall be paid such remuneration as is determined by the Remuneration Tribunal, but, until that remuneration is so determined, he shall be paid such remuneration as is prescribed.

(2) Subject to the Remuneration Tribunals Act 1973-1974 a member of a Board shall be paid such allowances as are prescribed.

(3) A reference in this section to a member of a Board does not include a reference to a person appointed or employed under the Public Service Act 1922-1974 or an officer or member of an authority of Australia.

**Leave of absence.**

**25.** A Board may grant leave of absence to a member upon such terms and conditions as the Board determines.

**Resignation.**

**26.** A member of a Board may resign his office by writing signed by him and delivered to the Minister.

**Termination of office.**

**27.** The Minister may remove a member of a Board from office for misbehaviour or physical or mental incapacity or if he is absent without leave of the Board from 3 consecutive meetings of the Board.

**Acting Chairman.**

**28.** (1) The Minister may appoint a person to act as Chairman of a Board—

(a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of an Acting Chairman; and

(b) at any time terminate such an appointment.

(3) Where a person is acting as Chairman in accordance with paragraph (1)(b) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of an acting Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) While the appointment of an Acting Chairman remains in force, he has, and may exercise, all the powers and shall perform all the functions of the Chairman.

(6) At any time when a person who is not a member of a Board is acting as Chairman of that Board, he shall be deemed to be a member of that Board for the purposes of sub-section 29(4) and (7) and section 31.

(7) The validity of anything done by the Acting Chairman shall not be called in question on the grounds that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

**Meetings.**

29. (1) A Board shall hold such meetings as are necessary for the performance of its functions.

(2) The meetings of a Board shall be convened by the Chairman of the Board.

(3) Where the Council requests the Chairman of a Board to do so, he shall forthwith convene a meeting of the Board.

(4) At a meeting of a Board a quorum is constituted by a majority of the members of the Board for the time being holding office.

(5) The Chairman of a Board shall preside at all meetings of the Board at which he is present.

(6) If the Chairman of a Board is not present at a meeting of the Board, the members present shall elect one of their number to preside at the meeting.

(7) Questions arising at a meeting of a Board shall be determined by a majority of the votes of the members present and voting.

(8) The person presiding at a meeting of a Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) In relation to a time when a person is acting as Chairman of a Board, references in this section to the Chairman of that Board shall be read as references to that person.

**Co-opted members.**

**30.** (1) Subject to this section, a Board may appoint a person to be a co-opted member of the Board for such period, not exceeding 12 months, as the Board determines.

(2) A co-opted member of a Board may take part in the deliberations of the Board, but has no power to vote.

(3) For the purposes of the provisions of this Act other than this section, a co-opted member of a Board shall not be regarded as a member of the Board.

(4) Not more than 2 persons shall be co-opted members of a Board at any one time.

(5) There shall be paid to a co-opted member of a Board, other than a person appointed or employed under the Public Service Act 1922-1974 or an officer or member of an authority of Australia, on account of travelling expenses incurred by reason of his attendance at meetings of the Board, such allowances as are prescribed.

**Disclosure of interest.**

**31.** (1) A member of a Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of more than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Board, and the member—

(a) shall not take part after the disclosure in any deliberation or decision of the Board with respect to that matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

PART V—FINANCE

**Moneys payable to Council.**

**32.** (1) There are payable to the Council such moneys as are appropriated by the Parliament for the purposes of the Council.

(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Council.

**Application of moneys.**

**33.** (1) The moneys of the Council shall be applied only—

(a) in payment of amounts properly payable in the performance of its functions; and

(b) in payment of any remuneration and allowances payable to members of the Council or of a Board.

(2) Notwithstanding anything contained in this Act, where a gift or bequest made to the Council is subject to conditions in relation to the purposes for which it is to be applied, the moneys paid to the Council as a result of the gift or bequest, and any income derived from the investment of those moneys, may be applied for those purposes and subject to those conditions, but not otherwise.

**Contracts, borrowing and investment.**

**34.** (1) The Council shall not, without the approval of the Minister—

(a) enter into a contract involving the payment or receipt of an amount exceeding $50,000; or

(b) enter into a lease of land for a period exceeding 10 years.

(2) The Council shall not—

(a) borrow moneys from any person; or

(b) invest its own moneys otherwise than in the direct performance of its functions.

**Bank accounts.**

**35.** (1) The Council may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

(2) The Council shall pay all moneys of the Council into an account referred to in sub-section (1).

(3) In this section, “approved bank” means the Reserve Bank of Australia or another bank for the time being approved by the Treasurer.

**Estimates.**

**36.** (1) The Council shall prepare estimates, in such form as the Minister directs, of its expenditure for each financial year and, if so directed by the Minister, for any other period, and shall submit those estimates to the Minister not later than such date as the Minister directs.

(2) Moneys shall not be expended by the Council otherwise than in accordance with estimates of expenditure approved by the Minister.

**Proper accounts to be kept.**

**37.** The Council shall cause to be kept proper accounts and records of the transactions and affairs of the Council and shall do all things necessary to ensure that all payments out of the moneys of the Council are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Council and over the incurring of liabilities by the Council.

**Annual reports.**

**38.** (1) The Council shall, as soon as practicable after the end of each financial year, prepare and furnish to the Minister a report of the operations of the Council during that year, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) The report shall set out all directions given by the Minister to the Council under section 7 during the year to which the report relates.

(3) Before furnishing financial statements to the Minister, the Council shall submit them to the Auditor-General, who shall report to the Minister—

(a) whether the statements are based on proper accounts and records;

(b) whether the statements are in agreement with the accounts and records;

(c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Council during the year have been in accordance with this Act; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The first report and financial statements of the Council under sub-section (1) shall be furnished as soon as practicable after 30 June 1975, and shall relate to the operations of the Council during the period that commenced at the commencement of this Act and ended on that date.

(5) The Council shall furnish to the Minister such additional reports, with or without financial statements, as the Minister from time to time requires.

(6) The Minister shall cause—

(a) the report and financial statements of the Council furnished to him under sub-section (1), together with the report of the Auditor-General; and

(b) a report and financial statements (if any) furnished to him under sub-section (5),

to be laid before each House of the Parliament within 15 sitting days of that House after having been received by the Minister.

**Audit.**

**39.** (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Council and the records relating to assets of, or in the custody of, the Council, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Council relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Council.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding $200.

**Taxation**

**40.** The Council is not subject to taxation under any law of Australia or of a State or Territory other than Papua New Guinea.

PART VI—MISCELLANEOUS

**Staff**

**41.** (1) The Council may appoint such officers or engage such employees as it thinks necessary for the purposes of this Act.

(2) The terms and conditions of service or employment of persons so appointed or engaged (in respect of matters not provided for by this Act) shall be as determined from time to time by the Council with the approval of the Public Service Board.

**Officers’ Rights Declaration Act.**

**42.** Where a person appointed or engaged under section 41 was, immediately before his appointment or engagement, an officer of the Australian Public Service or a person to whom the Officers’ Rights Declaration Act 1928-1973 applied—

(a) he retains his existing and accruing rights;

(b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and

(c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

**Superannuation.**

**43.** The Council is an approved authority for the purposes of the Superannuation Act 1922-1974.

**Regulations.**

**44.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.