

Australian Film Development Corporation

No. 21 of 1970

An Act to establish a Corporation for the purpose of encouraging the Making of Australian Cinematograph and Television Films and encouraging the Distribution of such Films within and outside Australia.

[Assented to 17 June 1970]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

Short title.

1. This Act may be cited as the *Australian Film Development Corporation Act 1970*.

Commencement.

2. This Act shall come into operation on a date to be fixed by Proclamation.

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1–4).

Part II.—Establishment of the Australian Film Development Corporation (Sections 5–15).

Part III.—The Australian Film Development Fund (Sections 16–19).

Part IV.—Functions and Powers of the Corporation (Sections 20–21).

Part V.—Miscellaneous (Sections 22–29).

4.—(1.) In this Act, unless the contrary intention appears—

Interpretation.

“ approved bank ” means the Reserve Bank of Australia, or another bank approved by the Treasurer for the purposes of the provision in which the expression occurs;

“ Australia ” includes all the Territories of the Commonwealth;

“ Australian film ” means—

(a) a film that has been made wholly or substantially in Australia and, in the opinion of the Corporation, has a significant Australian content;

(b) a film that is to be made wholly or substantially in Australia and, in the opinion of the Corporation, will have a significant Australian content; or

(c) a film that has been, or is to be, made in pursuance of an agreement or arrangement entered into between the Government of the Commonwealth or an authority of the Commonwealth and the Government of another country or an authority of the Government of another country;

“ film ” means a recording on material of any kind (including magnetic tape) of moving images, with or without associated sounds, including such a recording for use in, or as, a television programme;

“ member ” means a member of the Corporation and includes the Chairman and an acting member;

“ producer ”, in relation to a film, means the person by whom the arrangements necessary for the making of the film are undertaken;

“ the Chairman ” means the Chairman of the Corporation, and includes an acting Chairman;

“ the Corporation ” means the Australian Film Development Corporation established by this Act;

“ the Executive Officer ” means the Executive Officer of the Corporation;

“ the Fund ” means the Australian Film Development Fund established under section 16 of this Act.

(2.) In forming an opinion whether a film has or will have a significant Australian content, the Corporation shall have regard to—

(a) the subject-matter of the film;

(b) the place or places where the film was, or is to be, made;

- (c) the places of residence of the persons taking part in the making of the film (including authors, musical composers, actors and technicians);
- (d) the source from which moneys to be used in the making of the film will be derived;
- (e) the ownership of the shares or stock in the capital of any company concerned in the making of the film;
- (f) the ownership of the copyright in the film; and
- (g) any other matters that it thinks relevant.

(3.) A reference in this Act to a business of exhibiting films includes a reference to the business of operating a commercial television station within the meaning of the *Broadcasting and Television Act 1942-1969*.

PART II.—ESTABLISHMENT OF THE AUSTRALIAN FILM DEVELOPMENT CORPORATION.

Establishment
of Australian
Film
Development
Corporation.

5.—(1.) There is hereby established a corporation by the name of the Australian Film Development Corporation.

(2.) The Corporation—

- (a) is a body corporate with perpetual succession and a common seal; and
- (b) is capable, in its corporate name, of acquiring, holding and disposing of real and personal property and of suing and being sued.

(3.) All courts, judges and persons acting judicially shall take notice of the common seal of the Corporation affixed to a document and shall presume that it was duly affixed.

Composition
of the
Corporation.

6.—(1.) The Corporation shall consist of a Chairman and four other members.

(2.) The members shall be appointed by the Governor-General.

(3.) A person shall not be appointed as a member if he has a direct or indirect pecuniary interest in a business of making, distributing or exhibiting films or in a corporation carrying on such a business.

(4.) Subject to this Act, a member holds office for such period, not exceeding five years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(5.) The performance of the functions of the Corporation is not affected by reason of there being a defect in the appointment of a member or a vacancy in the office of a member.

Acting
appointments.

7.—(1.) Where the Chairman or any other member is, or is about to be, absent or not available to perform the functions of his office or there

is a vacancy in the office of the Chairman or of any other member, the Governor-General may appoint a person who is eligible for appointment as a member to be an acting member while the Chairman or other member is absent or not available to perform the functions of his office or until the filling of the vacancy, as the case may be.

(2.) Where the Chairman is, or is about to be, absent or not available to perform the functions of his office or there is a vacancy in the office of the Chairman, the Governor-General may appoint a member to be the acting Chairman while the Chairman is absent or not available to perform the functions of his office or until the filling of the vacancy, as the case may be.

(3.) The Governor-General may at any time terminate an appointment made by him under this section.

(4.) The validity of a decision of the Corporation shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

8.—(1.) A member shall be paid such remuneration as the Parliament provides, but until the first day of January, One thousand nine hundred and seventy-one, that remuneration shall be as is prescribed. Remuneration and allowances.

(2.) A member shall be paid such allowances for travelling expenses as are prescribed.

9. The Minister may grant leave of absence to a member upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence.

10. The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity. Dismissal of members.

11. A member may resign his office by writing under his hand delivered to the Governor-General. Resignation.

12.—(1.) Subject to this section, if a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent, except on leave granted by the Minister, from three consecutive meetings of the Corporation;
- (c) after his appointment as a member, becomes a person who has a direct or indirect pecuniary interest in a business of making, distributing or exhibiting films or in a corporation carrying on such a business; or
- (d) without reasonable excuse, fails to comply with his obligations under the next succeeding section,

Vacation of office.

the Governor-General shall remove the member from office.

(2.) Where paragraph (c) of the last preceding sub-section becomes applicable to a member otherwise than by reason of a voluntary act of the member, the Governor-General is not required to remove the member from office unless the member fails to divest himself of the interest as soon as reasonably practicable.

Members to
notify certain
interests.

13.—(1.) A member who becomes a person who has a direct or indirect pecuniary interest in a business of making, distributing or exhibiting films or in a corporation carrying on such a business shall, as soon as possible, give written notice to the Minister that he has become such a person and of the nature of the interest.

(2.) A member who has a direct or indirect pecuniary interest in a contract made or proposed to be made by the Corporation, being an interest otherwise than as a member of, and in common with the other members of, a company consisting of not less than twenty-five 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 Corporation.

(3.) A disclosure under the last preceding sub-section shall be recorded in the minutes of the meeting of the Corporation, and the member—

- (a) shall not take part after the disclosure in any deliberation or decision of the Corporation with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Corporation for any such deliberation or decision.

(4.) If an interest referred to in sub-section (2.) of this section is patent, that sub-section does not apply, but the last preceding sub-section applies as if there has been a disclosure in accordance with sub-section (2.) of this section.

Meetings
of the
Corporation.

14.—(1.) Meetings of the Corporation shall be convened by the Chairman but if there is no Chairman, or the Chairman is not available to convene a meeting, the Minister may convene a meeting.

(2.) The Chairman shall preside at all meetings of the Corporation at which he is present.

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

(4.) At a meeting of the Corporation, three members constitute a quorum.

(5.) Subject to this section, questions arising at a meeting of the Corporation shall be determined by a majority of votes of the members present.

(6.) At a meeting of the Corporation, the person presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7.) The Executive Officer or a person performing the duties of the Executive Officer shall, as far as practicable, attend all meetings of the Corporation but he shall, if so directed by the Corporation, temporarily retire from a meeting.

15.—(1.) The Corporation may, by writing under its common seal, but subject to the approval of the Minister, delegate to a member or to the Executive Officer, either generally or otherwise as provided by the instrument of delegation, all or any of its powers under this Act (except this power of delegation). Delegation.

(2.) A power so delegated may be exercised by the delegate in accordance with the instrument of delegation and, when so exercised, shall, for the purposes of this Act, be deemed to have been exercised by the Corporation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power by the Corporation.

PART III.—THE AUSTRALIAN FILM DEVELOPMENT FUND.

16.—(1.) There is hereby established a fund to be known as the Australian Film Development Fund. Establishment of Fund.

(2.) The Fund is vested in the Corporation.

17.—(1.) The Corporation shall cause an account to be opened and maintained with an approved bank for the purposes of the Fund. Bank account for purposes of the Fund.

(2.) Payment into the account of moneys payable into the Fund shall be deemed to be payment of those moneys into the Fund.

18.—(1.) There shall be paid into the Fund out of the Consolidated Revenue Fund, which is appropriated accordingly, an amount of One million dollars. Payments into the Fund.

(2.) There shall also be paid into the Fund—

- (a) any moneys appropriated by law for the purposes of the Fund;
- (b) any moneys paid to the Corporation for the purposes of the Fund;
- (c) any interest on, and repayments of, loans made out of the Fund;
- (d) any moneys paid to or recovered by the Corporation as a result of payments made by the Corporation in pursuance of guarantees given by the Corporation;
- (e) the proceeds of the sale of any property acquired out of moneys standing to the credit of the Fund;
- (f) any income derived from the investment of moneys standing to the credit of the Fund; and
- (g) any other moneys derived as a result of the expenditure of moneys standing to the credit of the Fund.

Application of
the Fund.

19.—(1.) Moneys in the Fund may be applied only for the purposes of—

- (a) the performance of the functions of the Corporation under this Act; and
- (b) the payment of remuneration or allowances to members.

(2.) Moneys in the Fund not immediately required for the purposes specified in the last preceding sub-section may be invested in the name of the Corporation—

- (a) on deposit with an approved bank being—
 - (i) a fixed deposit; or
 - (ii) a deposit of such other kind as the Treasurer, by instrument under his hand, approves;
- (b) in securities of the Commonwealth; or
- (c) subject to such conditions, if any, as the Treasurer, by instrument under his hand, determines—by way of loan to a person for the time being approved by the Treasurer upon the security of securities of the Commonwealth.

PART IV.—FUNCTIONS AND POWERS OF THE CORPORATION.

Functions
of the
Corporation.

20.—(1.) The functions of the Corporation are to encourage the making of Australian films and to encourage the distribution of Australian films both within and outside Australia.

(2.) The Corporation shall exercise its functions with a view to the achievement of high technical and artistic standards in Australian films.

Powers of
Corporation.

21.—(1.) The Corporation has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions and, without limiting the generality of the foregoing, has power—

- (a) to make loans on such terms and conditions, including conditions as to repayment of principal and payment of interest, as the Corporation thinks fit, to producers of Australian films;
- (b) to guarantee—
 - (i) the due repayment of loans (including bank overdrafts) made to producers of Australian films; and
 - (ii) the due payment of interest on such loans;
- (c) to provide financial assistance to producers of Australian films under arrangements that entitle the Corporation to receive a share of the proceeds derived from the sale, hire or exhibition of the films or the inclusion of the films in television programmes but do not render the Corporation liable for any debts incurred by those producers; and
- (d) subject to the approval of the Minister, to form, or participate with another person in the formation of, a company for the purpose of carrying on the business of the distribution of Australian films and to acquire, hold and dispose of shares or stock in the capital of a company carrying on such a business.

(2.) The power of the Corporation to give guarantees in accordance with paragraph (b) of the last preceding sub-section is subject to such limits as the Treasurer determines as to the total amount of moneys (other than interest) the payment of which may at any time be the subject of such guarantees.

PART V.—MISCELLANEOUS.

22.—(1.) The Corporation shall appoint a person to be the Executive Officer of the Corporation. staff.

(2.) The Executive Officer shall, under the Corporation, manage the affairs of the Corporation.

(3.) The Corporation may employ such persons in addition to the Executive Officer as it thinks necessary for the purposes of the Corporation.

(4.) The terms and conditions of employment of the Executive Officer and of persons employed under the last preceding sub-section are such as are determined by the Corporation with the approval of the Public Service Board.

(5.) Where a person employed by the Corporation was, immediately before becoming so employed, an officer of the Public Service of the Commonwealth—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a person so employed shall be taken into account as if it were service in the Public Service of the Commonwealth; and
- (c) the *Officers' Rights Declaration Act 1928–1969* applies as if this Act and this section had been specified in the Schedule to that Act.

23. The *Commonwealth Employees' Compensation Act 1930–1969* applies to members and to persons employed by the Corporation as if they were employees within the meaning of that Act and as if—

Application of
Commonwealth
Employees'
Compensation
Act.

- (a) references in that Act to the Commonwealth were references to the Corporation; and
- (b) members were employed by the Corporation.

24. The Corporation shall be deemed to be—

- (a) a Commonwealth authority for the purposes of the definition of "Approved authority" in sub-section (1.) of section 4 of the *Superannuation Act 1922–1969*;

Corporation to
be deemed to be
Commonwealth
authority.

- (b) a Commonwealth authority for the purposes of the *Air Accidents (Commonwealth Liability) Act 1963–1966*; and
- (c) an authority of the Commonwealth for the purposes of the *Commonwealth Employees' Furlough Act 1943–1968*.

Proper accounts
to be kept.

25. The Corporation shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Corporation and over the incurring of liabilities by the Corporation.

Audit.

26.—(1.) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Corporation and records relating to assets of, or in the custody of, the Corporation, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, 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 the last preceding sub-section.

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

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

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

(6.) The Auditor-General or an officer authorized by him may require any 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 officer 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 the last preceding sub-section is guilty of an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars.

27. The income and transactions of the Corporation are not subject to taxation under any law of the Commonwealth, of a State or of a Territory of the Commonwealth. Corporation not subject to taxation.

28.—(1.) The Corporation shall, as soon as practicable after each thirtieth day of June, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves. Reports.

(2.) Before furnishing financial statements to the Minister, the Corporation 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 and show fairly the financial operations and the state of the affairs of the Corporation;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Corporation 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.

(3.) The Minister shall cause the report and financial statements, together with the report of the Auditor-General, to be laid before each House of the Parliament within fifteen sitting days of that House after their receipt by the Minister.

(4.) The first report and financial statements under this section shall be prepared and furnished as soon as practicable after the thirtieth day of June, One thousand nine hundred and seventy-one, and shall relate to the operations of the Corporation during the period that commenced on the date of commencement of this Act and ended on the thirtieth day of June, One thousand nine hundred and seventy-one.

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