

AUSTRALIA COUNCIL AMENDMENT ACT 1976

No. 113 of 1976

An Act to amend the *Australia Council Act 1975*.

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

1. (1) This Act may be cited as the *Australia Council Amendment Act 1976*.¹ Short title,
&c.

(2) The *Australia Council Act 1975*² is in this Act referred to as the Principal Act.

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment.

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “Board” the following definition:—

“ ‘Committee’ means a Committee appointed under section 17A; ”; and

(b) by adding at the end thereof the following definition:—

“ ‘General Manager’ means the General Manager of the Council appointed under section 19A. ”.

Interpret-
ation.

4. Section 5 of the Principal Act is amended—

(a) by omitting from sub-paragraph (ix) of paragraph (a) the word “and” (last occurring); and

(b) by omitting paragraph (b) and substituting the following paragraphs:—

“(b) to administer the scheme referred to in section 5A;

(c) to furnish advice to the Government of the Commonwealth, either of its own motion or upon request made to it by the Minister, on matters connected with the promotion of the arts or otherwise relating to the performance of its functions; and

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

Functions of
Council.

5. After section 5 of the Principal Act the following section is inserted:—

Public
lending right
scheme.

“5A. (1) The Minister may, by notice published in the *Gazette*, make provision for and in relation to a scheme for the making of payments in respect of books written by Australian authors and held in libraries in Australia—

- (a) to the authors of those books;
- (b) to persons falling within specified classes of relationship to, or association with, deceased authors of those books;
- (c) to Australian persons who illustrated, translated or edited those books or otherwise contributed to their form or contents; and
- (d) to publishers of those books, being Australian publishers as defined in the scheme.

“(2) Payments in accordance with the scheme shall be made out of moneys of the Council.

“(3) A reference in sub-section (1) to an Australian author or an Australian person is a reference to an author or person who—

- (a) is an Australian citizen, wherever resident; or
- (b) is ordinarily resident in Australia or in an external Territory.

“(4) Where a book has been written by an Australian author or Australian authors and by another person or persons, this section applies as if the book had been written by the Australian author or Australian authors.”.

6. Section 7 of the Principal Act is repealed and the following section substituted:—

Delegation.

“7. (1) Subject to any direction of the Minister, the Council may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate any of its functions and any of its powers under this Act (other than this power of delegation or the power to appoint Committees) to—

- (a) a Board;
- (b) the Chairman of the Council;
- (c) the Deputy Chairman of the Council;
- (d) a Committee;
- (e) the General Manager; or
- (f) an officer appointed under section 41.

“(2) Where the Council delegates a function or power to a Board or a Committee, the Council shall from time to time give such general directions to the Board or the Committee with respect to the performance of the function or the exercise of the power as the Council thinks necessary to ensure the carrying out of the policies of the Council, and the Board or the Committee shall comply with those directions.

“(3) A function or power delegated under this section, when performed or exercised by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Council.

“(4) A delegation under this section does not prevent the performance of a function or the exercise of a power by the Council.”

7. Sections 9, 10 and 11 of the Principal Act are repealed and the following sections substituted:—

“9. (1) The number of members of the Council shall be not less than 15 nor more than 19. Membership
of Council.

“(2) The Council shall consist of—

- (a) the Chairman;
- (b) the Chairman of each Board;
- (c) 2 persons, each of whom is an officer of a Department of the Australian Public Service or an officer or member of an authority of the Commonwealth, being a Department or authority having responsibilities in relation to matters to which the functions of the Council relate;
- (d) the General Manager; and
- (e) subject to sub-section (1), such number of other persons as the Governor-General thinks fit, of whom a 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 (e) shall be appointed by the Governor-General.

“(4) The members of the Council, other than the General Manager, 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 or vacancies in the membership of the Council; or
- (b) the number of members of the Council falling below 15 for a period of not more than 6 months.

“10. (1) The Governor-General may appoint a member of the Council, other than the Chairman or the General Manager, to be the Deputy Chairman of the Council. Deputy
Chairman.

“(2) A person appointed under this section holds office as Deputy Chairman until the expiration of his period of appointment as a member or until he sooner ceases to be a member.

“(3) Where a member appointed as Deputy Chairman is, upon ceasing to be Deputy Chairman by virtue of the expiration of the period

of his appointment as a member, re-appointed as a member, he is eligible for re-appointment as Deputy Chairman.

“(4) The Deputy Chairman may resign his office of Deputy Chairman by writing signed by him and delivered to the Governor-General.

Term of
office.

“11. (1) Subject to this Act, a member of the Council appointed under paragraph 9 (2) (a) or (e) holds office for such period, being not less than 1 year nor more than 4 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 one or both of the provisions referred to in sub-section (1) for a continuous period exceeding 6 years.

“(3) A person who has held office under one or both of the provisions referred to in sub-section (1) for a continuous period of 6 years is not eligible to be again appointed under either of those provisions for a term of office commencing within 2 years 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.”.

8. Section 15 of the Principal Act is repealed and the following section substituted:—

Acting
Chairman.

“15. (1) Subject to sub-section (2), the Minister may appoint a person (who may be a member of the Council) to act as Chairman of the Council during a vacancy in the office of Chairman.

“(2) A person appointed under sub-section (1) to act as Chairman shall not continue so to act for more than 12 months.

“(3) During any period when there is neither a Chairman nor a person appointed under sub-section (1) or when the Chairman or the person appointed under sub-section (1) is absent from duty or from Australia or is, for any reason, unable to perform the functions of the office of Chairman—

(a) the Deputy Chairman shall act as Chairman; or

(b) if there is no Deputy Chairman or the Deputy Chairman is not available to act as Chairman, the Minister may appoint a member of the Council to act as Chairman, but any such appointment ceases to have effect when the circumstances giving rise to that appointment cease.

“(4) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
- (b) at any time terminate such an appointment.

“(5) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

“(6) At any time when a person is acting as Chairman in accordance with this section, he has, and may exercise, all the powers and shall perform all the functions of the Chairman and, if he is not a member of the Council, 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 a person acting as Chairman in accordance with this section 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.”.

9. After section 17 of the Principal Act the following section is inserted:—

“17A. (1) The Council may appoint Committees to assist the Council in the performance of its functions under this Act. Committees.

“(2) A Committee appointed under this section shall consist of such persons, whether members of the Council or of a Board or not, as the Council thinks fit.”.

10. Section 18 of the Principal Act is repealed.

Repeal of
s. 18.

11. After section 19 of the Principal Act the following Part is inserted:—

“PART IIIA—THE GENERAL MANAGER OF THE COUNCIL

“19A. (1) There shall be a General Manager of the Council who shall be appointed by the Governor-General. General Manager.

“(2) The General Manager shall, subject to and in accordance with the directions of the Council, conduct the affairs of the Council.

“(3) The General Manager holds office on such terms and conditions (if any), in respect of matters not provided for by this Act, as are determined by the Governor-General.

“19B. (1) The General Manager shall be appointed for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment. Period of appointment of General Manager.

“(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the General Manager and a person shall

not be appointed or re-appointed as the General Manager for a period that extends beyond the date on which he will attain the age of 65 years.

Leave of absence of General Manager.

“19C. The Council may grant leave of absence to the General Manager on such terms and conditions as to remuneration and otherwise as the Council determines.

Resignation of General Manager.

“19D. The General Manager may resign his office by writing signed by him and delivered to the Governor-General, but the resignation does not have effect until accepted by the Governor-General.

Acting General Manager.

“19E. (1) The Minister may appoint a person to act as General Manager—

- (a) during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia or is, for any other reason, unable to perform the duties 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 General Manager; and
- (b) at any time terminate such an appointment.

“(3) Where a person is acting as General Manager in accordance with paragraph (1) (b) and the office of General Manager 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 General Manager ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

“(5) At any time when a person is acting as General Manager in accordance with this section, he has, and may exercise, all the powers and shall perform all the functions of the General Manager and, if he is not a member of the Council, shall be deemed to be a member of the Council for the purposes of sub-sections 17 (4) and (7) and section 19.

“(6) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that the appointment had ceased to have effect.

“19F. (1) The Governor-General may terminate the appointment of the General Manager for misbehaviour or physical or mental incapacity. Termination of office.

“(2) If the General Manager—

- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) is absent from duty, except on leave granted by the Council, for 14 consecutive days or for 28 days in any 12 months;
- (c) is absent, except on leave granted by the Council or with the approval of the Council, from 3 consecutive meetings of the Council;
- (d) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or make an assignment of his remuneration for their benefit; or
- (e) fails to comply with his obligations under section 19,

the Governor-General shall terminate his appointment.”

12. Section 21 of the Principal Act is repealed and the following section substituted:—

“21. (1) A Board shall make such inquiries, and furnish to the Council such reports, in connexion with any matter referred to it by the Council as the Council directs. Functions and powers of Boards.

“(2) A Board shall also have such functions and powers as are delegated to it under section 7.”

13. Section 22 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words and figures “7 nor more than 10” and substituting the words and figures “5 nor more than 7”; and
- (b) by omitting from sub-section (2) the words and figures “9 nor more than 14” and substituting the words and figures “7 nor more than 9”.

Membership of Boards.

14. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the figure “3” and substituting the figure “4”;
- (b) by omitting from sub-section (2) the figure “4” and substituting the figure “6”;
- (c) by omitting from sub-section (3) the figure “4” and substituting the figure “6”; and
- (d) by omitting from sub-section (3) the word and figures “12 months” and substituting the word and figure “2 years”.

Term of office.

Repeal of
s. 24.

15. Section 24 of the Principal Act is repealed.

Acting
Chairman.

16. Section 28 of the Principal Act is amended by omitting sub-sections (5) and (6) and substituting the following sub-section:—

- “(5) At any time when a person is acting as Chairman of a Board—
- (a) he has, and may exercise, all the powers and shall perform all the functions of the Chairman;
 - (b) if he is not a member of that Board, he shall be deemed to be a member of that Board for the purposes of sub-sections 29 (4) and (7) and section 31; and
 - (c) he shall be deemed to be a member of the Council by virtue of paragraph 9 (2) (b).”

Repeal of
s. 30.

17. Section 30 of the Principal Act is repealed.

18. After section 41 of the Principal Act the following section is inserted:—

Remunera-
tion.

“41A. (1) A person to whom this section applies shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(2) A person to whom this section applies shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

“(4) In this section, ‘person to whom this section applies’ means—

- (a) a member of the Council;
- (b) a member of a Board;
- (c) a member of a Committee; or
- (d) the General Manager.”

Regulations.

19. Section 44 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) In particular, but without limiting the generality of sub-section (1), the regulations may make provision for and in relation to the administration of the scheme referred to in section 5A, including provision for—

- (a) the making of statutory declarations in respect of applications for payments;
- (b) the recovery of over-payments; and
- (c) penalties, not exceeding \$500, in respect of offences against the regulations.”

20. The Principal Act is amended as set out in the Schedule.

Additional
amendments.

21. (1) A person who, immediately before the commencement of this Act, held office as a member of the Council or of a Board by virtue of an appointment under a provision of the Principal Act continues to hold office for the remainder of his term of office as if he had been appointed under the corresponding provision of the Principal Act as amended by this Act.

Transitional
provisions.

(2) Until 1 July 1977, the number of members of the Council or of a Board may exceed the maximum number specified in respect of the Council or of that Board, as the case may be, by the Principal Act as amended by this Act, but shall not exceed the maximum number so specified by the Principal Act.

(3) A person who, immediately before the commencement of this Act, held office as a co-opted member of the Council or of a Board continues to hold office for the remainder of his term of office as if sections 18 and 30 of the Principal Act had not been repealed.

SCHEDULE

Section 20

ADDITIONAL AMENDMENTS

Provision	Amendment
Sub-section 16 (5)	Omit " <i>Public Service Act 1922-1974</i> ", substitute " <i>Public Service Act 1922</i> ".
Section 42	Omit " <i>Officers' Rights Declaration Act 1928-1973</i> ", substitute " <i>Officers' Rights Declaration Act 1928</i> ".
Section 43	Repeal the section.

NOTES

1. Act No. 113, 1976; assented to 29 October 1976.
2. Act No. 11, 1975.