

# INSTITUTE OF THE ARTS ACT 1987 No. 124

## NEW SOUTH WALES



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**INSTITUTE OF THE ARTS ACT 1987 No. 124**

NEW SOUTH WALES



**Act No. 124, 1987**

An Act to provide for the establishment of the New South Wales Institute of the Arts and for related matters. [Assented to 16 June 1987]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

**PART 1**  
**PRELIMINARY**

**Short title**

1. This Act may be cited as the "Institute of the Arts Act 1987".

**Commencement**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

- (2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

**Interpretation**

3. (1) In this Act—

"advanced education course" means a course of study approved under the Higher Education Act 1975 as an advanced education course;

"Board" means the Board of Governors of the Institute;

"by-laws" means by-laws under this Act;

"chief executive officer" means the chief executive officer of the Institute or a member of the staff of the Institute appointed to act in that capacity;

"constituent school" means a part of the Institute designated by the Minister under section 5 as a constituent school of the Institute;

"employees" means the persons employed by the Institute under section 17 (1);

"Institute" means the New South Wales Institute of the Arts;

"member" means member of the Board;

"regulations" means regulations under this Act;

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“staff” means—

- (a) the persons employed by the Institute under section 17 (1);
- (b) the persons employed for the purposes of the Institute under section 17 (7); or
- (c) the persons of whose services the Institute makes use under section 17 (8).

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
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**PART 2****THE INSTITUTE****Constitution of the Institute**

4. There is constituted by this Act an educational institution which shall be a corporation under the corporate name of the “New South Wales Institute of the Arts”.

**Constituent schools of the Institute**

5. There shall be such constituent schools of the Institute as the Minister may designate under a specified name by order published in the Gazette.

**City Art Institute to become part of the Institute**

6. (1) The educational institution within the Sydney College of Advanced Education known as the City Art Institute shall, on the commencement of this section, become a part of the Institute.

(2) The City Art Institute shall, by an order under section 5, be designated as a constituent school of the Institute under the name specified in the order.

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**East Sydney Art School to become part of the Institute**

7. (1) The educational institution within the Department of Technical and Further Education known as the East Sydney Art School shall, on the commencement of this section, become a part of the Institute.

(2) The East Sydney Art School shall, by an order under section 5, be designated as a constituent school of the Institute under the name specified in the order.

(3) The East Sydney Art School shall, after it becomes a part of the Institute, continue to be conducted by the Director-General of Technical and Further Education, subject to such arrangements as may be agreed on between the Director-General and the Institute.

**Power to declare other educational institutions to be part of the Institute**

8. (1) The Minister may, by order published in the Gazette, declare any specified educational institution—

- (a) that forms part of a government department or administrative office;  
or
- (b) that is or forms part of a college under the Colleges of Advanced Education Act 1975,

to be a part of the Institute.

(2) An order under this section may be made in relation to an educational institution that forms part of a government department or administrative office not administered by the Minister only with the concurrence of the Minister administering that department or office.

(3) On the day on which an order under this section takes effect, the educational institution to which the order relates becomes a part of the Institute.

**Provisions relating to transfer of educational institutions to the Institute**

9. Schedule 1 has effect with respect to any educational institution that becomes a part of the Institute by or under this Act.

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## PART 3

## THE BOARD OF GOVERNORS OF THE INSTITUTE

**Constitution of the Board**

10. (1) There shall be a Board of Governors of the Institute.
- (2) The Board shall be the governing authority of the Institute.
- (3) Any act, matter or thing done in the name of, or on behalf of, the Institute by the Board, or with the authority of the Board, shall be deemed to have been done by the Institute.

**First Board**

11. (1) The first Board of Governors of the Institute shall consist of not more than 23 persons appointed by the Minister.
- (2) The members of the first Board shall, subject to subsection (3), hold office for such period as the Minister specifies by notification published in the Gazette.
- (3) The Minister may, by notification published in the Gazette, from time to time extend the period for which members of the first Board hold office.

**Members of the Board (other than first Board)**

12. (1) The Board shall (after the expiration of the term of office of the members of the first Board) consist of—
- (a) official members;
  - (b) appointed members; and
  - (c) elected members.
- (2) The official members shall be—
- (a) the chief executive officer;
  - (b) the Director-General of Technical and Further Education or, if the Director-General has nominated some other person, that other person; and
  - (c) the persons who are for the time being principal officers (however styled) or acting principal officers of the Institute's constituent schools.

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(3) The appointed members shall comprise 8 persons appointed by the Minister, being persons whom the Minister considers to be suitable for appointment after consulting such persons as the Minister thinks appropriate.

(4) The elected members shall comprise—

(a) after the convocation of graduates of the Institute is established—  
one member elected by that convocation;

(b) if—

(i) there are not more than 2 constituent schools of the Institute—  
3 members elected by the members of the academic staff of the  
Institute; or

(ii) there are more than 2 constituent schools of the Institute—4  
members elected by the members of that academic staff;

(c) two members elected by the students of the Institute; and

(d) one member elected by those members of the staff of the Institute  
who are not members of the academic staff.

(5) Any such election of members shall be held in accordance with the  
by-laws.

(6) Of the members elected by the members of the academic staff of the  
Institute—

(a) where 3 members are to be elected by the members of that staff—  
one (but not more than one) shall be an officer of the Technical and  
Further Education Teaching Service; or

(b) where 4 members are to be elected by the members of that staff—  
one or two (but not more than two) shall be an officer or officers of  
the Technical and Further Education Teaching Service.

(7) Whether or not a person is to be treated as a graduate of the Institute,  
as a member of the academic or other staff of the Institute or as a student  
of the Institute for the purposes of this section may be determined by the  
by-laws.

**Provisions with respect to members and procedure of the Board**

13. (1) Schedule 2 has effect with respect to the members of the Board.



- (2) Schedule 3 has effect with respect to the procedure of the Board.
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#### PART 4

#### OBJECTS AND FUNCTIONS OF THE INSTITUTE

##### **Objects of the Institute**

14. The objects of the Institute are—
- (a) to strive for the achievement of excellence in the teaching of the arts;
  - (b) to provide practical and academic education in the various branches of the arts at the highest attainable level for those persons who have exceptional talent in any of those branches; and
  - (c) to promote and encourage within the community an appreciation of, and achievement in, the arts.

##### **Functions of the Institute**

15. (1) The functions of the Institute are—
- (a) to control, manage and maintain all real and personal property vested in or acquired by the Institute;
  - (b) to advise the Minister on the requirements and future development of the Institute and its constituent schools and on any matter arising from the exercise or proposed exercise of any other functions of the Institute;
  - (c) to provide facilities for the teaching and study of the various branches of the arts and training in practical and academic studies in the arts and, in particular, to provide advanced education courses and other courses in the arts to students of the Institute;
  - (d) to confer academic awards on, and to issue certificates evidencing those awards to, students, and other persons eligible under the by-laws, who successfully complete advanced education courses and other courses provided by the Institute;
  - (e) to give, show, publish or exhibit lectures, films, broadcasts, telecasts, publications and exhibitions concerning the arts; and
  - (f) to affiliate or co-operate with or to form any association or body that has objects similar to those of the Institute.

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(2) The Institute shall exercise its functions in such manner as will promote the development of the arts in New South Wales.

(3) The Institute shall, at such times as may be required by the New South Wales Higher Education Board, prepare and forward to that Board—

- (a) such estimates as are specified by that Board as to the financial and other needs of the Institute; and
- (b) such other information as that Board requires in order to discharge its responsibilities.

(4) The Institute shall, in addition to any other report required by the Annual Reports (Statutory Bodies) Act 1984, provide the Minister with such reports on the activities of the Institute as the Minister may direct.

(5) The Institute has power to do all of the things necessary or convenient to be done for or in connection with the exercise of its functions.

(6) The Institute shall not alienate, mortgage, charge or lease any land or interest in land except with the consent in writing of the Minister.

(7) The Institute may, without the consent in writing of the Minister, lease any land if—

- (a) the term of the lease does not exceed 21 years; and
- (b) there is reserved for the whole of the term the best rent that may reasonably be obtained without fine.

**Chief executive officer**

**16. (1)** The Institute may appoint a member of its staff to be the chief executive officer of the Institute.

(2) The chief executive officer—

- (a) has and shall exercise such functions in relation to the Institute as the Board directs; and
- (b) is responsible for executing the decisions of the Board.

(3) The person holding office as chief executive officer may hold that office in addition to any other position that the person holds as a member of the staff of the Institute.

**Employment of staff**

**17. (1)** The Institute may employ such persons as it considers necessary to enable it to exercise its functions.

(2) The Institute may not employ a person—

- (a) in a position on its academic staff unless the position is within the academic staff establishment of the Institute determined by the Higher Education Board for the purposes of this subsection; or
- (b) in a position on its staff (other than its academic staff) unless the position is within the staff (other than academic staff) establishment of the Institute determined by the Public Service Board for the purposes of this subsection.

(3) The Higher Education Board and the Public Service Board may delegate to the Institute their power to determine the respective staff establishments of the Institute under subsection (2).

(4) Except in so far as provision is otherwise made by law, the conditions of employment of employees of the Institute (including salary, wages or remuneration) shall be such as are from time to time determined by the Institute after consultation with, and with the concurrence of, the Public Service Board.

(5) In any proceedings before a tribunal having power to deal with industrial matters within the meaning of the Industrial Arbitration Act 1940, the Public Service Board shall act for the Institute in so far as the proceedings involve a matter in respect of which subsection (4) confers power on the Institute.

(6) The Institute shall give effect to an order or determination made in respect of employees of the Institute by a tribunal referred to in subsection (5).

(7) Such other staff as may be necessary to enable the Institute to exercise its functions may be appointed and employed under the Public Service Act 1979 or the Education Commission Act 1980.

(8) The Institute may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

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(9) To the extent to which the Public Service Board may, under section 35 of the Public Service Act 1979, delegate any function to a Department Head, within the meaning of that Act, it may, under that section, delegate the function to the Institute or a member of the staff of the Institute.

(10) To the extent to which a Department Head, within the meaning of the Public Service Act 1979, may, under section 48 of that Act, delegate any function to any officer of the Department within the meaning of that Act, the Department Head may, under that section, delegate the function to the Institute or a member of the staff of the Institute.

(11) Schedule 4 has effect with respect to the staff of the Institute.

**Delegation**

18. The Institute may delegate to any person or group of persons (including a committee or board established under the by-laws) the exercise of any of its functions, except this power of delegation.

**Power to accept gifts etc.**

19. (1) The Institute has power—

- (a) to acquire by gift, bequest or devise any property for any of the purposes of the Institute; and
- (b) to agree to any condition to which any such gift, bequest or devise is subject.

(2) The rule of law against remoteness of vesting does not apply to any such condition to which the Institute has agreed.

(3) The Stamp Duties Act 1920 does not apply to any real or personal property comprised in a gift, bequest or devise made or to be made to the Institute or any of its constituent schools.

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PART 5  
FINANCIAL PROVISIONS

**Interpretation**

20. In this Part—

“class A funds” means—

- (a) private gifts, other than private gifts which may be applied without restriction or limitation—
  - (i) for any of the purposes of the Institute; or
  - (ii) for any of the purposes of any constituent school of the Institute;
- (b) grants; and
- (c) student tuition fees;

“class B funds” means money held by the Institute which is not class A funds;

“grant” means money granted to the Institute by or on behalf of the Commonwealth Government or the New South Wales Government, or any part of any such money;

“investment pool” means an investment pool established under section 24;

“pooled item” means—

- (a) a private gift;
  - (b) a grant;
  - (c) student tuition fees;
  - (d) class B funds;
  - (e) securities; or
  - (f) real property,
- forming part of an investment pool;

“private gift” means—

- (a) money, other than a grant, given to the Institute;
- (b) money obtained from the conversion of property given to the Institute; or

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(c) money obtained from the investment or use of property given to the Institute;

“securities” has the same meaning as in the Securities Industry (New South Wales) Code.

**Financial year of the Institute**

21. The financial year of the Institute shall be—

- (a) except as provided by paragraph (b)—the period from 1 January to the next following 31 December; or
- (b) if the Treasurer, pursuant to section 4 (1A) of the Public Finance and Audit Act 1983, determines the financial year of the Institute—the financial year so determined.

**Trust instruments apply despite secs. 23–25**

22. The terms of—

- (a) any instrument creating a trust with respect to a private gift;
- (b) an instrument making a grant; and
- (c) any instrument creating a trust with respect to property, other than money, given to the Institute,

have effect despite sections 23, 24 and 25.

**Investment of money**

23. The Institute may invest any class A funds or class B funds held by the Institute—

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power to invest those funds—
  - (i) in accordance with and subject to the Trustee Act 1925; and
  - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

**Investment pools**

24. (1) The Institute may establish and maintain one or more investment pools for the collective investment of property held by the Institute.

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**(2) The Institute may from time to time—**

- (a) bring into or withdraw from an investment pool the whole or any part of any class A funds or class B funds held by the Institute; or
- (b) bring into an investment pool—
  - (i) securities, other than securities in respect of which the donor has, in an instrument creating a trust in respect of those securities, specified that the income from those securities shall be applied for a purpose other than the general purposes of the Institute; or
  - (ii) real property, other than real property in respect of which the donor has, in an instrument creating a trust in respect of that real property, specified that the income from that real property shall be applied for a purpose other than the general purposes of the Institute,

or withdraw money to the value attributed equitably to those securities or that real property by the Institute at the date of withdrawal.

**(3) The Institute shall not bring into or retain in any investment pool the whole or any part of any class A funds if the investments in which the capital of the investment pool is invested are not investments made in accordance with and subject to the Trustee Act 1925.**

**Distribution of income of investment pools**

**25. (1) The Institute shall, at least once a year, distribute the income of an investment pool.**

**(2) On the distribution of the income of an investment pool under subsection (1), the Institute shall, in respect of—**

- (a) a pooled item being a private gift where the donor of that private gift has, in an instrument creating a trust in respect of that private gift—
  - (i) specified that the income from the investment of that private gift shall be applied for a purpose other than the general purposes of the Institute; or
  - (ii) specified that that private gift shall be applied for a purpose other than the general purposes of the Institute and that private gift is insufficient, without the addition of the income from the investment of that private gift, to achieve that purpose; and

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- (b) any other pooled item in respect of which the Institute is otherwise required to do so,

credit the income of that investment pool to the account kept by it in respect of that private gift or other pooled item proportionately according to the value attributed equitably to that private gift or other pooled item by the Institute at the date of distribution and the period for which that private gift has formed part of that investment pool since the date of the last preceding distribution of the income of that investment pool.

(3) If the Institute distributes the income of an investment pool under subsection (1), it may, in respect of a pooled item, other than a pooled item referred to in subsection (2) (a) or (b), credit the income of that investment pool to any account kept by it.

**Nature of private gift etc. not affected by pooling**

26. (1) The inclusion in an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds) does not affect the identity of that pooled item as a private gift, a grant, student tuition fees or class B funds, as the case may be.

(2) The inclusion in an investment pool of a pooled item does not affect any trust to which that pooled item was subject immediately before its inclusion in that investment pool.

(3) On the withdrawal from an investment pool of a pooled item (being a private gift, a grant, student tuition fees or class B funds), that pooled item shall continue to be subject to any trust to which it was subject immediately before its inclusion in that investment pool.

(4) On the withdrawal from an investment pool of money to the value attributed to any securities or real property by the Institute under section 24 (2) (b), that money shall be subject to any trust to which those securities were subject immediately before their inclusion in that investment pool or that real property was subject immediately before its inclusion in that investment pool, as the case may be.

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## PART 6

## MISCELLANEOUS

**Powers over certain land**

27. (1) If any real or personal property used for the conduct of the Institute is vested in the Crown or a Minister of the Crown, whether as Constructing Authority or otherwise, the Institute is responsible for the control and management of that real or personal property and for its maintenance.

(2) Subsection (1) does not apply to real property referred to in that subsection if the Minister has, by order notified to the Institute, declared that that subsection does not apply to that property.

(3) Except to the extent that subsection (4) otherwise provides, nothing in subsection (1) authorises the Institute to alienate, mortgage, charge or lease any land or an interest in any land vested in the Crown or a Minister of the Crown, whether as Constructing Authority or otherwise.

(4) The Institute may, on behalf of the Crown or a Minister of the Crown, lease land of which, in accordance with subsection (1), it has control and management provided that the lease—

- (a) is for a term not exceeding 21 years; and
- (b) includes a condition providing for the forfeiture of the lease and re-entry by the lessor should the lease be assigned.

(5) The Institute is, in the exercise of any of its functions under this section, subject to the control and direction of the Minister.

**Acquisition of land**

28. (1) The Governor may, on the recommendation of the Minister, resume or appropriate any land under Division 1 of Part V of the Public Works Act 1912 for the purposes of this Act.

(2) The Minister may, for the purposes of this Act, acquire land, including land previously appropriated or resumed for any purpose, by purchase, acceptance of transfer or conveyance.

(3) The Minister shall not make a recommendation for the purposes of subsection (1) unless the Minister is satisfied that adequate provision has been or will be made for the payment by the Institute of—

- (a) compensation for the resumption or appropriation; and

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(b) all necessary charges and expenses incidental to the resumption or appropriation.

(4) A resumption or appropriation effected under subsection (1) shall be deemed to be for an authorised work within the meaning of the Public Works Act 1912 and the Minister shall, in relation to that authorised work, be deemed to be the Constructing Authority within the meaning of that Act.

(5) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not, but section 38 of that Act does, apply in relation to a resumption or appropriation under this section.

**Grant or transfer of certain land to Institute**

29. (1) If land on which the Institute is conducted is vested in the Crown or a Minister of the Crown (whether as Constructing Authority or otherwise), the land may—

(a) where it is vested in the Crown—be transferred to the Institute subject to such trusts, conditions, covenants, provisions, exemptions and reservations as the Minister administering the Crown Lands Consolidation Act 1913 thinks fit; or

(b) where it is vested in a Minister of the Crown—be conveyed or transferred to the Institute for such estate, and subject to such trusts and rights of way or other easements, as the Minister thinks fit.

(2) A conveyance, transfer or other instrument executed for the purposes of this section—

(a) is not liable to be stamped with stamp duty under the Stamp Duties Act 1920; and

(b) may be registered under any Act without fee.

**Exemption from local rates**

30. Land vested in the Institute and used or occupied by the Institute solely for its purposes—

(a) is not ratable land under the Local Government Act 1919; and

(b) is exempt from—

(i) water, sewerage and stormwater drainage rates under the Metropolitan Water, Sewerage, and Drainage Act 1924; and

(ii) after the commencement of the Water Board Act 1987—service charges under that Act.

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**Political and religious discrimination prohibited**

**31.** A person shall not, because of the person's political or religious views or beliefs—

- (a) be denied admission as a student of the Institute;
- (b) be ineligible to be employed by the Institute; or
- (c) be ineligible to receive any academic award or to enjoy any benefit, advantage or privilege relating to the Institute or its facilities.

**Proof of certain matters not required**

**32.** In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) any resolution of the Board;
- (b) the appointment of, or the holding of office by, any member; or
- (c) the presence of a quorum at any meeting of the Board.

**By-laws**

**33. (1)** The Institute may make by-laws, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by the by-laws or that is necessary or convenient for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) the general control and management of the Institute or any of its constituent schools;
- (b) the establishment and membership of a convocation of graduates of the Institute;
- (c) the election of the elected members of the Board, the qualifications for candidates at any such election and the terms of office of the elected members;
- (d) the election of a presiding member and a deputy presiding member of the Board, and their terms of office;
- (e) the proceedings of the Board, including the times, places and conduct of its meetings;
- (f) the appointment of committees and boards of the Institute and of the Board and the functions and proceedings of any such committee or board;

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- (g) the use and custody of the seal of the Institute;
  - (h) the functions of the chief executive officer;
  - (i) the manner of appointment, promotion and dismissal of employees of the Institute;
  - (j) the conduct of students enrolled at the Institute and of employees of the Institute, and the imposition of penalties for breaches of discipline by those students or employees;
  - (k) the examinations for, and the granting of, fellowships, scholarships and bursaries;
  - (l) the conferring of prizes and awards, the conduct of examinations and the acceptance of specified qualifications as the equivalent of specified examination results;
  - (m) the progression of students in their courses at the Institute;
  - (n) the admission of students of other educational institutions to any status within the Institute;
  - (o) the conferring on graduates of other educational institutions, or on other persons, of academic awards without examination;
  - (p) the admission (including charges for admission) or exclusion of students or members of the public to or from the premises of the Institute or any part of those premises;
  - (q) the conditions under which any services may be provided by or received by the Institute, including conditions requiring the payment of fees or other charges;
  - (r) the exemption of persons specified or described in the by-laws from the payment of fees or other charges;
  - (s) the affiliation with the Institute of any other institution concerned in education or research; and
  - (t) the payment of out-of-pocket expenses to members of the Board.
- (2) A by-law is required to be approved by the Governor and does not have effect unless it is so approved.

**Regulations**

**34. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by the regulations or that is necessary or convenient for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) any matter for or with respect to which by-laws may be made; and
- (b) provisions of a savings or transitional nature consequent on an educational institution becoming a part of the Institute by or under this Act.

**(2)** If there is any inconsistency between the regulations and the by-laws, the regulations prevail.

**(3)** A regulation may create an offence punishable by a penalty not exceeding \$500.

**(4)** Proceedings for an offence against the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Amendment of Act No. 152, 1983**

**35.** The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2 (in alphabetical order) the following words:

New South Wales Institute of the Arts.

**Amendment of Act No. 28, 1916**

**36.** The Superannuation Act 1916 is amended by inserting at the end of Schedule III the following words:

New South Wales Institute of the Arts.

**Amendment of Act No. 45, 1985**

**37.** The State Public Service Superannuation Act 1985 is amended by inserting at the end of Schedule 3 the following words:

New South Wales Institute of the Arts.

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## SCHEDULE 1

(Sec. 9)

PROVISIONS RELATING TO TRANSFER OF EDUCATIONAL INSTITUTIONS  
TO THE INSTITUTEPART 1—*Preliminary***Interpretation**

## 1. In this Schedule—

“college of advanced education” means a college under the Colleges of Advanced Education Act 1975;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act;

“transfer date” means—

- (a) in relation to the City Art Institute referred to in section 6—the date on which that section commences;
- (b) in relation to the East Sydney Art School referred to in section 7—the date on which that section commences; or
- (c) in relation to an educational institution to which an order under section 8 relates—the date on which the order takes effect;

“transferred educational institution” means—

- (a) on and from the commencement of section 6—the City Art Institute referred to in that section;
- (b) on and from the commencement of section 7—the East Sydney Art School referred to in that section; or
- (c) on and from the date on which an order takes effect under section 8—the educational institution to which the order relates.

PART 2—*Transfer of City Art Institute and other educational institutions that are or form part of colleges of advanced education***Application**

## 2. This Part applies to the following transferred educational institutions:

- (a) the City Art Institute referred to in section 6;
- (b) an educational institution specified in an order under section 8 that is or forms part of a college of advanced education.

*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL INSTITUTIONS TO THE INSTITUTE—*continued***Dissolution etc. of former educational institutions**

3. On the transfer date—

- (a) the City Art Institute referred to in section 6 ceases to be a part of the Sydney College of Advanced Education;
- (b) a transferred educational institution that is a college of advanced education is dissolved; or
- (c) a transferred educational institution that forms part of a college of advanced education ceases to be a part of that college.

**Transfer of employees**

4. (1) In this clause—

“eligible employee” means an employee (not being a casual employee) of—

- (a) the Sydney College of Advanced Education (being a person employed by that College immediately before the transfer date in connection with the City Art Institute);
- (b) a college of advanced education that is a transferred educational institution (being a person employed by that college immediately before the transfer date); or
- (c) a college of advanced education, a part of which is a transferred educational institution (being a person employed by that college immediately before the transfer date in connection with that part of that college);

“former college of advanced education”, in relation to a transferred employee, means the college of advanced education which employed the transferred employee immediately before the transfer date;

“transferred employee” means an eligible employee who becomes, or who is deemed to have become, an employee of the Institute or of a college, an officer or temporary employee of the Public Service or a member of a Teaching Service in accordance with an order under subclause (5).

(2) Before an educational institution becomes a transferred educational institution, the Minister may, in consultation with such bodies and persons as the Minister considers appropriate, make arrangements for an eligible employee to be transferred to a position in—

- (a) the Institute;
- (b) a college of advanced education;
- (c) the Public Service; or
- (d) a Teaching Service.

*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL INSTITUTIONS TO THE INSTITUTE—*continued*

(3) An eligible employee who is an employee of the Sydney College of Advanced Education (being a person employed in connection with the City Art Institute) may only be transferred—

- (a) with the agreement of the employee; and
- (b) to a position in the Institute.

(4) Nothing in this clause authorises the transfer of a person to a position in—

- (a) a college of advanced education without the concurrence of the council of that college;
- (b) the Public Service without the concurrence of the Public Service Board; or
- (c) a Teaching Service without the concurrence of the Education Commission of New South Wales.

(5) The Governor, in accordance with the arrangements made by the Minister under subclause (2), may by order published in the Gazette transfer an eligible employee specified in the order to a position in—

- (a) the Institute;
- (b) a college of advanced education;
- (c) the Public Service; or
- (d) a Teaching Service.

(6) An eligible employee specified in an order under subclause (5) becomes, or shall be deemed to have become, on the transfer date—

- (a) an employee of the Institute;
- (b) an employee of a college of advanced education;
- (c) an officer or temporary employee of the Public Service; or
- (d) a member of a Teaching Service,

in accordance with the terms of the order.

(7) Where the contract of employment with a former college of advanced education of a transferred employee, being a contract in force immediately before the transfer date, was expressed to expire on a specified or ascertainable date after the transfer date, the transferred employee shall be deemed to have become an employee of the employer to which he or she is transferred subject to a contract of employment expressed to expire on the date so specified or ascertained.



*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL  
INSTITUTIONS TO THE INSTITUTE—*continued*

(8) A transferred employee shall be paid salary or wages, and allowances, at a rate not less than the rate that was payable to the transferred employee, immediately before the transfer date, subject, in the case of salary or wages, to any adjustment necessary to give effect to any fluctuation in the basic wage for adult males, or adult females, as the case may be, for the time being in force within the meaning of Part V of the Industrial Arbitration Act 1940, until the salary is, or the wages or allowances are, varied or altered—

- (a) by an award of a competent tribunal or an industrial agreement or otherwise in accordance with law; or
- (b) where the variation or alteration increases the amount of the salary, wages or allowances—by the employer to which the transferred employee is transferred.

(9) Except as otherwise provided by this clause, the conditions of employment of any transferred employee shall, subject to the variation of any such condition by an award of a competent tribunal or an industrial agreement or otherwise in accordance with law, be no less favourable to the employee than the conditions of employment with the former college of advanced education immediately before the transfer date.

(10) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of a transferred employee with the former college of advanced education shall be deemed to be service with the employer to which the transferred employee is transferred.

(11) For the purposes of calculating the entitlement of a transferred employee to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the transferred employee would be entitled—

- (a) any long service leave or leave in the nature of long service leave; and
- (b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service leave,

taken or received by the transferred employee before that time.

(12) A transferred employee shall retain any right to annual leave accrued to the transferred employee in respect of his or her service with the former college of advanced education.

(13) A transferred employee is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(14) Nothing in this clause affects the operation of the Industrial Arbitration Act 1940.

*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL INSTITUTIONS TO THE INSTITUTE—*continued***Superannuation—employer's liability**

5. Where, before the transfer date—

- (a) a person died or retired or was retrenched;
- (b) at the date of the person's death, retirement or retrenchment—
  - (i) the person was an employee of a college of advanced education that becomes a transferred educational institution; and
  - (ii) that college was, for the purposes of any superannuation scheme, his or her employer; and
- (c) that college is dissolved under this Schedule,

then, for the purposes of the Act by or under which that scheme is established, the Institute shall, on and after the transfer date, be deemed to be the employer in the service of which that person was employed at the date of his or her death, retirement or retrenchment for the purposes of any provision in that Act under which payments may be required to be made by that employer in respect of the superannuation scheme.

**Students**

6. (1) Each person who was, immediately before the transfer date, a student of a transferred educational institution enrolled in an advanced education course shall, on the transfer date, become a student of the Institute and be enrolled in an advanced education course that is substantially the same, in academic content, as the firstmentioned advanced education course.

(2) The Institute shall, on the transfer date, provide such advanced education courses as are necessary for the purposes of subclause (1).

(3) Where a student is enrolled in an advanced education course pursuant to subclause (1), the Institute—

- (a) shall, as far as is practicable, give the student credit in that course for any subject or work completed by the student in the advanced education course from which the student was transferred; and
- (b) where—
  - (i) before the completion of that course the student requests the Board of the Institute to confer on the student, on completion of that course, an academic award under the seal of the former college of advanced education;
  - (ii) in the opinion of the Board of the Institute the student has completed such part of his or her course at that former college as to warrant the academic award being conferred under the seal of the former college; and

*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL  
INSTITUTIONS TO THE INSTITUTE—*continued*

(iii) the student satisfactorily completes the course in which the student has enrolled at the Institute,

shall confer that academic award on the student under the seal of that former college.

(4) A person having custody or possession of the seal of a former college of advanced education shall make the seal available to the Institute for the purposes of this clause.

(5) Where a person completed an advanced education course provided by a former college of advanced education (being a former college that has been dissolved under this Schedule) but an academic award had not been conferred on the person in respect of the course before the transfer date, the Institute shall confer the academic award on the person under the seal of the former college.

(6) In this clause—

“former college of advanced education”, in relation to a student, means the college of advanced education of which the person was a student immediately before the transfer date.

**Transfer of assets etc. of dissolved college**

7. (1) In this clause—

“dissolved college” means a transferred educational institution that is a college of advanced education and that is dissolved under this Schedule.

(2) On and from the transfer date for a dissolved college—

- (a) all real and personal property that, immediately before that date, was vested in the dissolved college, and the control and management of the property, shall vest in and belong to the Institute;
- (b) all money and claims in respect of money that, immediately before that date, were payable to or by or recoverable by or from the dissolved college shall become money and claims payable to or by or recoverable by or from the Institute;
- (c) all legal proceedings brought by or against the dissolved college, and pending immediately before that date, shall be deemed to be proceedings brought by or against the Institute;
- (d) all contracts, agreements, arrangements and undertakings entered into with, and all securities lawfully given to or by, the dissolved college, and in force immediately before that date, shall be deemed to be contracts, agreements, arrangements and undertakings entered into with, and securities given to or by, the Institute:

*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL INSTITUTIONS TO THE INSTITUTE—*continued*

- (e) the Institute may, in addition to pursuing any other remedies or exercising any other powers that may be available to it, pursue the same remedies for the recovery of money and claims referred to in this subclause and for the prosecution of proceedings so referred to as the dissolved college might have done before that date;
  - (f) the Institute may enforce and realise any security or charge existing immediately before that date in favour of the dissolved college, and may exercise any powers conferred on the dissolved college by the security or charge as if the security or charge were a security or charge in favour of the Institute;
  - (g) all claims for money for which the dissolved college would have been liable shall be claims for money for which the Institute is liable; and
  - (h) a reference in any other Act, or in any statutory instrument or other instrument, to the dissolved college shall be read as a reference to the Institute.
- (3) If a lease is transferred to the Institute by virtue of subclause (2), it is not necessary for the lessee to attorn to the Institute.

**Transfer of assets etc. where part only of college transferred**

8. Where a transferred educational institution is a part of a college of advanced education, the college shall transfer to the Institute such real and personal property relating to the conduct of the transferred educational institution and make such other transitional arrangements—

- (a) as may be agreed on between the Institute and the college; or
- (b) as the Minister may direct.

**Regulations**

9. The provisions of this Part have effect subject to the regulations.

PART 3—*Transfer of East Sydney Art School and other educational institutions that form part of a government department or administrative office***Application**

10. This Part applies to the following transferred educational institutions:

- (a) the East Sydney Art School referred to in section 7;
- (b) an educational institution specified in an order under section 8 that forms part of a government department or administrative office.

*Institute of the Arts 1987*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE TRANSFER OF EDUCATIONAL  
INSTITUTIONS TO THE INSTITUTE—*continued***Students**

11. (1) Each person who was, immediately before the transfer date, a student of a transferred educational institution enrolled in a course at that institution shall, on the transfer date, become a student of the Institute, but shall not thereby cease to be enrolled in that course.

(2) After the transfer date, the Director-General of Technical and Further Education, or other person in charge of the transferred educational institution, shall continue to provide, on behalf of the Institute, a course in which any such student is enrolled.

**Regulations**

12. The provisions of this Part have effect subject to the regulations.

## SCHEDULE 2

(Sec. 13 (1))

## PROVISIONS RELATING TO THE MEMBERS OF THE BOARD

**Interpretation**

1. In this Schedule—

“appointed member” means a member referred to in section 12 (1) (b), and includes any member of the first Board of Governors of the Institute;

“elected member” means a member referred to in section 12 (1) (c);

“official member” means a member referred to in section 12 (1) (a).

**Age of members**

2. A person of or above the age of 70 years is not eligible to be an appointed or elected member.

**Presiding member and deputy presiding member**

3. (1) A presiding member and a deputy presiding member of the Board shall be elected by the members in accordance with the by-laws.

(2) Until the by-laws otherwise provide, one of the appointed members shall, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Minister, be appointed as the first presiding member of the Board.

*Institute of the Arts 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued***Term of office**

4. (1) Subject to this Schedule, an appointed member shall hold office for such period (not exceeding 4 years) as may be specified in the instrument of appointment of the member, but (if otherwise qualified) is eligible for re-appointment.

(2) Subject to this Schedule, an elected member shall hold office for such period (not exceeding 4 years) as may be prescribed by the by-laws, but (if otherwise qualified) is eligible for re-election.

(3) This clause does not apply to the members of the first Board of Governors of the Institute.

**Filling of vacancy in office of member**

5. If the office of any appointed or elected member becomes vacant, a person shall, subject to this Act and the by-laws, be appointed or elected to fill the vacancy.

**Casual vacancies**

6. An appointed or elected member shall be deemed to have vacated office if the member—

- (a) dies;
- (b) absents himself or herself from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Board or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Board for being absent from those meetings;
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983;
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) being an elected member, ceases to have the qualification that made him or her eligible to be elected;
- (g) being an appointed member, resigns the office by instrument in writing addressed to the Minister;

*Institute of the Arts 1987*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE BOARD—*continued*

- (h) being an elected member, resigns the office by instrument in writing addressed to the Board;
- (i) reaches the age of 70 years; or
- (j) vacates office under any other Act.

**Effect of certain other Acts**

7. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person as a member.

(3) The office of an appointed or elected member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

**Liability of members etc.**

8. No matter or thing done by the Institute, the Board, any member or any person acting under the direction of the Board shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

**Chief executive officer**

9. If a person is both chief executive officer and a person mentioned in section 12 (2) (c), the person is a member only by virtue of being chief executive officer.

## SCHEDULE 3

(Sec. 13 (2))

## PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD

**General procedure**

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to the by-laws, be as determined by the Board.

*Institute of the Arts 1987*SCHEDULE 3—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE BOARD—*continued***Quorum**

2. The quorum for a meeting of the Board is a majority of the members for the time being holding office.

**Presiding member**

3. (1) The presiding member or, in the absence of that member, the deputy presiding member shall preside at a meeting of the Board.

(2) In the absence of both the presiding member and the deputy presiding member from a meeting of the Board, another member elected to chair the meeting by the members present shall preside at the meeting.

(3) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present shall be the decision of the Board.

**Minutes**

5. The Board shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

**First meeting of Board**

6. The presiding member shall call the first meeting of the Board in such manner as the presiding member thinks fit.

## SCHEDULE 4

(Sec. 17 (11))

PRESERVATION OF RIGHTS OF MEMBERS OF STAFF OF THE INSTITUTE  
ON TRANSFER TO OTHER POSITIONS**Interpretation**

1. In this Schedule—

“transfer date”, in relation to a transferred officer, means the date on which the person concerned becomes a transferred officer;

“transferred officer” means—

- (a) an employee of the Institute who becomes an officer of the Public Service or a Teaching Service, but remains a member of the staff of the Institute; or



*Institute of the Arts 1987*SCHEDULE 4—*continued*PRESERVATION OF RIGHTS OF MEMBERS OF STAFF OF THE INSTITUTE  
ON TRANSFER TO OTHER POSITIONS—*continued*

- (b) a member of the staff of the Institute (being an officer of the Public Service or a Teaching Service) who becomes an employee of the Institute.

**Preservation of leave entitlements**

2. (1) For the purposes of sick leave, long service leave or leave in the nature of long service leave, service of a transferred officer before the transfer date as a member of the staff of the Institute, or as an officer of the Public Service or a Teaching Service, shall be deemed to be service with the Institute.

(2) For the purposes of calculating the entitlement of a transferred officer to long service leave or leave in the nature of long service leave at any time, there shall be deducted from the amount of long service leave or leave in the nature of long service leave to which, but for this subclause, the transferred officer would be entitled—

- (a) any long service leave or leave in the nature of long service leave; and
- (b) the equivalent, in long service leave or leave in the nature of long service leave, of any benefit instead of long service leave or leave in the nature of long service leave.

taken or received by the transferred officer before that time.

(3) A transferred officer shall retain any right to annual leave accrued to the transferred officer in respect of his or her service before the transfer date as a member of the staff of the Institute or as an officer of the Public Service or a Teaching Service.

(4) A transferred officer is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

(5) Nothing in this clause affects the operation of the Industrial Arbitration Act 1940.