



New South Wales

Film Industry Amendment Act 1996 No 82

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New South Wales

Film Industry Amendment Act 1996 No 82

Act No 82, 1996

An Act to amend the *Film Industry Act 1988* to make further provision with respect to the functions of the Film and Television Office and to establish a board of management of the Office; and for other purposes. [Assented to 6 November 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Film Industry Amendment Act 1996*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Film Industry Act 1988 No 18

The *Film Industry Act 1988* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Long title

Omit “to provide for the eventual winding-up of the reconstituted corporation and the assumption of its functions by the Crown”. Insert instead “to provide for the functions of the reconstituted corporation”.

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Film and Television Office Act 1988*.

[3] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Board means the Board of the Office.

Director means the person holding office as Director of the Office under Part 2 of the *Public Sector Management Act 1988*.

sound recording means a recording in or on any material from which sounds may be reproduced.

[4] Section 3 (1)

Omit the definition of *film*. Insert instead:

film means a recording in or on any material from which images, with or without associated sounds, may be produced and includes a film made for television or for any other means of dissemination.

[5] Section 3 (1)

Omit the definitions of *documentary film* and *short film*.

[6] Division 1 of Part 2, heading

Insert "Division 1 The Office" before section 4.

[7] Section 4 Constitution of the Office

Omit section 4 (3) and (4).

[8] Section 4A

Insert after section 4:

4A Object of the Office

The object of the Office is to assist, promote and strengthen the film and television industry in New South Wales so as to promote Australia's cultural identity, encourage the employment of Australians in all aspects of film and television production, encourage investment in the industry, enhance the industry's export potential, encourage innovation and enhance quality in the industry.

[9] Section 5 Staff of the Office

Omit "*Public Service Act 1979*" from section 5 (1).
Insert instead "*Public Sector Management Act 1988*".

[10] Section 5 (2)

Omit "Public Service Board".
Insert instead "Public Employment Office".

[11] Section 6

Omit the section. Insert instead:

6 Functions of the Office

- (1) The Office has the following functions in order to further its object:
 - (a) to provide financial and other assistance to the film and television industry in carrying out the industry's activities in New South Wales and to disseminate information about those activities,
 - (b) to provide financial and other assistance for persons (including directors, producers, actors, writers and technicians) whose work in the film and television industry merits encouragement,
 - (c) to provide financial and other assistance for script and project development for film and television,
 - (d) to contribute, financially and otherwise, to the work of film festivals and markets,
 - (e) to assist in the promotion of public interest in film as a medium of communication and as an art form and in the development of an informed and critical film audience,
 - (f) to provide policy and support services and advice to Government agencies on the production of films and sound recordings,
 - (g) to advise the Minister on the operation of the film and television industry in New South Wales,
 - (h) to undertake the production of films or sound recordings on its own behalf or for any other person, body or organisation (including any Government agency),
 - (i) to carry out such obligations and responsibilities determined by the Minister as may be necessary for the maintenance and administration of the film catalogue vested in the Office.

- (2) The Office has the power to do all things that may be necessary or convenient to be done for or in connection with the exercise of its functions. The power includes, but is not limited to, the following:
- (a) the power to lend or grant money on such terms as it thinks fit,
 - (b) the power to acquire, or enter into agreements or arrangements with respect to the acquisition of, rights (whether exclusive or non-exclusive) in or in respect of a film or sound recording,
 - (c) the power to enter into agreements or arrangements that entitle the Office to receive a share of the proceeds from the sale, hire, distribution, broadcasting or any other exploitation of a film or sound recording in respect of which the Office has provided assistance financially or otherwise,
 - (d) the power to impose such charges or fees in respect of access to, or use of, any of the resources, facilities or services of the Office as the Office thinks fit,
 - (e) the power to act as trustee of money, films, sound recordings or other property vested in the Office upon trust or to act on behalf of the Government, or a Government agency, in the administration of a trust relating to films or sound recordings or to matters connected with films or sound recordings.
- (3) The Office may do all things that are supplemental or incidental to, or consequential on, the exercise of its functions.

Division 2 Board of the Office

6A Establishment of Board

- (1) There is to be a Board of the Office.
- (2) The Board is to consist of 7 members nominated by the Minister and appointed by the Governor.

- (3) At least one of the members is to be from outside the film and television industry.
- (4) Of the members, one is to be appointed Chairperson of the Board (whether by the instrument of the member's appointment as a member or by another instrument executed by the Governor). The Chairperson is to be a member appointed from outside the film and television industry.
- (5) Schedule 2 has effect with respect to the constitution and procedure of the Board.

Division 3 Operation and management of the Office

6B Minister's role

The Office is, in the exercise of its functions, subject to the control and direction of the Minister.

6C Board's role

- (1) All decisions relating to the operation of the Office are to be made by or under the authority of the Board, but subject to any direction of the Minister.
- (2) The Board must give the Minister any information about the exercise of the Office's functions that the Minister requests.

6D Director's role

- (1) The Director is, subject to section 6C (1), responsible for the day to day management of the operation of the Office in accordance with the general policies and specific directions of the Board.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Office by the Director is taken to have been done by the Office.

6E Director may attend meetings of Board

The Director is entitled to attend and to participate in discussions at meetings of the Board but is not entitled to vote at any such meeting.

[12] Section 9A

Insert after section 9:

9A Personal liability

A matter or thing done or omitted to be done by the Board, the Director, a member of the Board or any person acting under the direction of the Board or the Director does not, if the matter or thing was done or omitted in good faith for the purpose of executing this Act, subject any member of the Board, the Director or a person so acting personally to any action, liability, claim or demand.

[13] Section 15 Dissolution of the Office

Omit the section.

[14] Schedule 1 Savings, transitional and other provisions

Renumber clause 1 as clause 1A.

[15] Schedule 1

Insert before clause 1A (as renumbered):

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Film Industry Amendment Act 1996

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Film and Television Office Act 1988

[16] Schedule 1, clause 7

Omit the clause. Insert instead:

Part 3 Provisions consequent on enactment of Film Industry Amendment Act 1996

7 Saving of existing delegations

Any delegation under section 9 that was in force immediately before the commencement of the *Film Industry Amendment Act 1996* continues in force until it is revoked.

[17] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Provisions relating to constitution and procedure of Board

(Section 6A (5))

Part 1 Constitution

1 Definition

In this Schedule:

member means a member of the Board.

2 Terms of office of members

- (1) Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) However, if a person has held office as a member for terms of office totalling more than 6 years in any 7 year period, the person is not eligible to be appointed to a further term of office as a member unless a period of at least 3 years has elapsed since the person last held office as a member.

3 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Deputies

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is taken to be a member.
- (3) The deputy of a member who is Chairperson of the Board does not (because of this clause) have the member's functions as Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
 - (e) is absent from 4 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 having been absent from those meetings, or
 - (f) 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, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

6 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

7 Chairperson

A person who is a member and Chairperson of the Board vacates office as Chairperson if the person ceases to be a member.

8 Disclosure of pecuniary interests

- (1) If
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Board.

- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
 - (a) be present during any deliberation of the Board with respect to the matter, or
 - (b) take part in any decision of the Board with respect to the matter.
- (5) For the purpose of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Board for the purpose of making the determination, or
 - (b) take part in the making by the Board of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Board.

9 Effect of certain other Acts

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any 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,the 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 under this Act as such a member.
- (3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

Part 2 Procedure

10 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

11 Quorum

The quorum for a meeting of the Board is 4 members.

12 Presiding member

- (1) The Chairperson of the Board is to preside at a meeting of the Board. In the absence of the Chairperson from a meeting of the Board, another member of the Board is to be chosen by the members present to preside at the meeting.
- (2) 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.

13 Voting

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

14 Transaction of business outside meetings or by telephone

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if a member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1),
or
 - (b) a meeting held in accordance with subclause (2),
the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

15 First meeting

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

[Minister's second reading speech made in—
Legislative Assembly on 18 September 1996
Legislative Council on 29 October 1996]