

# Sydney Opera House Trust Act 1961 No 9

[1961-9]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# Sydney Opera House Trust Act 1961 No 9



New South Wales

An Act to make provisions with respect to the management and administration of the Sydney Opera House; to provide for the establishment and incorporation of The Sydney Opera House Trust and to define its powers, authorities, duties and functions; and for purposes connected therewith.

## 1 Name of Act

This Act may be cited as the *Sydney Opera House Trust Act 1961*.

## 2 Definitions

(1) In this Act, unless the context or subject-matter otherwise indicates or requires:

**By-laws** means by-laws made under this Act.

**Opera House** means the whole of the land comprised in Lot 4, Deposited Plan 787933, and Lot 5, Deposited Plan 775888, and includes any building, work or fixture on that land.

**Trust** means The Sydney Opera House Trust constituted and incorporated under this Act.

**Trustee** means a member of the Trust.

(2) Notes included in this Act do not form part of this Act.

## 3 Constitution of Sydney Opera House Trust

(1) There shall be constituted under this Act a Sydney Opera House Trust which shall carry into effect the objects and purposes of this Act and shall have and may exercise the powers, authorities, duties and functions conferred or imposed on the Trust by or under this Act.

In the exercise and discharge of its powers, authorities, duties and functions the Trust shall, notwithstanding anything contained in this Act, be subject to the control and direction of the Minister.

(2) The Trust shall be a body corporate under the name of “The Sydney Opera House

Trust” with perpetual succession and a common seal, and shall, for the purposes and subject to the provisions of this Act, be capable by that name of suing and being sued, and of purchasing, holding, granting, demising, disposing of or otherwise dealing with real and personal property and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

- (3) The Trust may acquire and hold by purchase, lease or otherwise any real or personal property and any rights or privileges which the Trust may think necessary or convenient for its objects.

#### **4 Objects and functions of Trust**

- (1) The Trust shall have the following objects and may exercise any or all of the following functions:
  - (a) the administration, care, control, management and maintenance of the Opera House,
  - (b) the management and administration of the Opera House as a theatre, concert hall and place of assembly to be used as a place for the presentation of any of the branches of the musical, operatic, dramatic, terpsichorean, visual or auditory arts or as a meeting place in respect of matters of international, national or local significance,
  - (c) the promotion of artistic taste and achievement in any of the branches of the arts referred to in the foregoing provisions of this subsection,
  - (d) scientific research into, and the encouragement of, new and improved forms of entertainment and methods of presentation of entertainment.
- (2) In order that the Trust may attain any of its objects and effectively carry out any of its functions, it shall have power to do all such things as it may deem incidental or conducive to the profitable and effective carrying out thereof.
- (3) The Trust shall have in addition to any other powers conferred on it by this Act the specific powers set out in Schedule 1.
- (4) The mere enumeration of specific powers in Schedule 1 or the conferring upon the Trust of other specific powers by any other section of this Act shall not operate to limit the general powers conferred upon the Trust by this section.
- (5)-(7) (Repealed)

#### **5 (Repealed)**

#### **6 Trustees**

- (1) The Trust is to consist of 10 members appointed by the Governor on the nomination of

the Minister.

- (2) The trustees must include at least 2 persons who have knowledge of, or experience in, the performing arts.
- (3) A trustee is to hold office for such period, not exceeding 3 years, as is specified in the trustee's instrument of appointment but is, subject to subsection (4), eligible for re-appointment.
- (4) A trustee is not to hold office for 4 consecutive terms.
- (5) On the occurrence of a vacancy in the office of a trustee otherwise than by the expiration of the trustee's term of appointment, the Governor may, on the nomination of the Minister, appoint a person to fill the vacant office for the residue of the term of office of his or her predecessor.
- (5A) For the purposes of subsection (4) only, an appointment under subsection (5) does not constitute (and is taken never to have constituted) an appointment for a term of office.
- (6) (Repealed)

## **7 (Repealed)**

## **8 Casual vacancies**

- (1) A trustee shall be deemed to have vacated office if the trustee:
  - (a) dies,
  - (b) resigns office by writing under the trustee's hand addressed to the Governor,
  - (c) becomes a mentally incapacitated person,
  - (d) is absent from three consecutive ordinary meetings of the Trust of which notice has been given to the trustee personally or in the ordinary course of post and is not before the expiration of six weeks after the last of such meetings excused by the Trust for his or her absence from such meetings,
  - (e) is removed from office by the Governor,
  - (f) accepts or continues to hold after appointment as a trustee:
    - (i) a position or employment with, or, whether in an honorary capacity or otherwise, membership of, the board or committee of management of any corporation, society, authority, organisation or association which is a party or becomes a party to a contract or arrangement with the Trust for the use or hire of the Opera House or any part thereof, or

(ii) a pecuniary interest or benefit whether direct or indirect in or from any contract or arrangement with the Trust for the use or hire of the Opera House or any part thereof,

and the Minister in the circumstances of the case considers that the office of the trustee should become vacant.

(2) The Governor may, for any cause which appears to the Governor to be sufficient, remove any trustee from office.

## **9 Application of [Government Sector Employment Act 2013](#)**

(1) The provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to a trustee.

(2) The office of a trustee is, for the purposes of the [Constitution Act 1902](#), or any Act amending or replacing that Act, taken not to be an office or place of profit under the Crown.

## **10 Chairperson**

(1) The Chairperson of the Trust shall be such trustee as the Governor on the nomination of the Minister may appoint as Chairperson.

(2) At every meeting of the Trust at which the Chairperson is present the Chairperson shall preside. In the absence of the Chairperson from any meeting of the Trust, the trustees present at the meeting shall select from amongst their number a Chairperson to preside at that meeting.

## **11 Procedure of Trust and quorum**

(1) The procedure for the calling of meetings of the Trust and the conduct of business at such meetings shall, subject to any by-laws in relation thereto, be as determined by the trustees.

(2) Any 6 trustees shall be a quorum for the purposes of any meeting of the Trust.

(3) Any duly convened meeting of the Trust at which a quorum is present shall be competent to transact any business of the Trust and shall have and may exercise and perform all the powers, authorities, duties and functions by this Act conferred or imposed upon the Trust.

(4) A decision of the majority of trustees present at a meeting of the Trust shall be the decision of the Trust.

(5) The Chairperson or other the trustee presiding at any meeting of the Trust shall have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

### **11A Transaction of business outside meetings or by telephone**

- (1) The Trust may, if it thinks fit, transact any of its business by the circulation of papers among all the trustees for the time being, and a resolution in writing approved in writing by a majority of those trustees is taken to be a decision of the Trust.
- (2) The Trust may, if it thinks fit, transact any of its business at a meeting at which trustees (or some trustees) participate by telephone, closed-circuit television or other means, but only if any trustee who speaks on a matter before the meeting can be heard by the other trustees.
- (3) For the purposes of:
  - (a) the approval of a resolution under subsection (1), or
  - (b) a meeting held in accordance with subsection (2),the Chairperson and each trustee have the same voting rights as they have at an ordinary meeting of the Trust.
- (4) A resolution approved under subsection (1) is, subject to the by-laws, to be recorded in the minutes of the meetings of the Trust.
- (5) Papers may be circulated among the trustees for the purposes of subsection (1) by facsimile or other transmission of the information in the papers concerned.

### **12 Delegation to committees, and other persons**

- (1) The Trust may establish such committees as it thinks fit for the purpose of assisting it to carry out its objects and functions under this Act.
- (2) A person may be appointed to any such committee whether or not the person is a member of the Trust.
- (3) Any such committee may exercise such of the Trust's powers, authorities, duties and functions as may be delegated to it by the Trust.
- (4) Any member of staff of the Trust may exercise such of the Trust's powers, authorities, duties and functions as may be delegated to the member of staff by the Trust.
- (5) Notwithstanding any delegation made under this section, the Trust may continue to exercise and discharge any of the powers, authorities, duties and functions so delegated.
- (6) The Trust may at any time revoke any such delegation, either wholly or in part.

### **12A Disclosure of pecuniary interests**

- (1) If:



(a) a trustee has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Trust, and

(b) the interest appears to raise a conflict with the proper performance of the trustee's duties in relation to the consideration of the matter,

the trustee must, as soon as possible after the relevant facts have come to the trustee's knowledge, disclose the nature of the interest at a meeting of the Trust.

(2) A disclosure by a trustee at a meeting of the Trust that the trustee:

(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 which may arise after the date of the disclosure and which is required to be disclosed under subsection (1).

(3) Particulars of any disclosure made under this section must be recorded by the Trust 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 determined by the Trust.

(4) After a trustee has disclosed the nature of an interest in any matter, the trustee must not, unless the Trust otherwise determines:

(a) be present during any deliberation of the Trust with respect to the matter, or

(b) take part in any decision of the Trust with respect to the matter.

(5) For the purposes of the making of a determination by the Trust under subsection (4), a trustee 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 Trust for the purpose of making the determination, or

(b) take part in the making by the Trust of the determination.

(6) A contravention of this section does not invalidate any decision of the Trust.

(7) This section applies to a member of a committee of the Trust and the committee in the same way as it applies to a trustee of the Trust and the Trust.

### **13 Allowances**

The trustees shall be entitled to receive allowances for conveyance and subsistence in

travelling to and from meetings of the Trust and upon the business of the Trust, in such amounts or at such rates as may be prescribed by or under the by-laws.

#### **14 Validity of acts and proceedings**

- (1) No act or proceeding of the Trust or of any person acting pursuant to any direction of the Trust shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any trustee.
- (2) All acts and proceedings of the Trust or of any person acting pursuant to any direction of the Trust shall, notwithstanding the subsequent discovery of any defect in the appointment of any trustee, or that any such trustee was disqualified from acting as or incapable of being a trustee, be as valid as if such trustee had been duly appointed and was qualified to act as or capable of being, and had acted as, a trustee and as if the Trust had been properly and fully constituted.

#### **15 Common seal**

- (1) The common seal of the Trust shall be kept in the custody of the Chairperson or such other trustee as the Trust may determine, and shall not be affixed to any instrument or writing except upon resolution of the Trust.
- (2) Every instrument to which the common seal is affixed shall be signed by two trustees and such other member of staff of the Trust as the Trust may appoint.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Trust, and shall presume that it was duly affixed.

#### **16 Staff**

Persons may be employed in the Public Service under the [Government Sector Employment Act 2013](#) to enable the Trust to exercise its functions.

**Note—**

Section 59 of the [Government Sector Employment Act 2013](#) provides that the persons so employed (or whose services the Trust makes use of) may be referred to as officers or employees, or members of staff, of the Trust. Section 47A of the [Constitution Act 1902](#) precludes the Trust from employing staff.

#### **17 (Repealed)**

#### **18 Gifts, endowments, bequests and devises**

- (1) The Trust shall have power to acquire by gift inter vivos, endowment, bequest or devise, any property for any of the purposes of this Act, and to agree to the condition of any such gift, endowment, bequest or devise.
- (2) The rule of law relating to perpetuities shall not apply to any such condition to which the Trust has agreed.

- (3) The *Duties Act 1997* does not apply to or in respect of any gift inter vivos, endowment, bequest or devise made or to be made to the Opera House or the Trust.

## **19 Sale or disposal of certain property**

- (1) Where the Trust adjudges any real or personal property for the time being vested in the Trust to be unfit for or not required for its objects, the Trust may notwithstanding the terms of any trust affecting the property or of any arrangement or condition made or agreed to by the Trust at the time of its acquisition by the Trust:

- (a) sell the property or exchange it for any other property, or
- (b) dispose of without consideration or in the case of personal property destroy the property if the Trust adjudges it to be of no salable value.

- (1A) The proceeds of any sale under subsection (1) (a) are, after deducting the costs of the sale (including incidental costs), to be held by the Trust for the objects of the Trust.

- (2) Any property sold or disposed of by way of exchange or otherwise by the Trust purporting to exercise any of the powers conferred on the Trust by this section shall vest in the person acquiring it by virtue of the sale or other disposition freed and discharged from any trust, arrangement or condition relating to any sale or disposition of the property or to the use of the property to which the property was subject in the hands of the Trust.

- (3) No person acquiring any property from the Trust purporting to exercise any of the powers conferred on the Trust by this section shall be concerned to inquire whether a case has arisen to authorise the sale or other disposition of the property or whether the power was otherwise properly and regularly exercised or to see the application of any purchase money paid to the Trust.

## **20 Statutory endowment**

For the purpose of assisting the Trust in carrying out its objects, there shall be paid by the Treasurer to the Trust such sum as Parliament may approve each year. Such sum shall be paid in such instalments as the Treasurer may approve.

## **21-23 (Repealed)**

## **24 Investment of funds of the Trust**

- (1) The Trust may, subject to the provisions of any trust affecting its funds or to any directions or restrictions attached thereto or imposed by the donor thereof, from time to time invest any of its funds in any investment in which a trustee may invest trust funds in accordance with the *Trustee Act 1925*.
- (2) The Trust may retain and hold any investments which may be transferred to it otherwise than by way of purchase notwithstanding that such investments may not be

of the nature authorised by subsection (1).

## **25 Charges and admission fees**

(1) The Trust:

- (a) may by resolution from time to time fix the scale of charges and admission fees to be made and levied by it for admission to the Opera House or any part of the Opera House at any time except during a period when the Trust has granted the use of the Opera House or such part to any person pursuant to section 26, and
- (b) may, except during any such period, demand, recover and receive such charges and admission fees from any person entering the Opera House or the part of the Opera House in respect of which a charge or admission fee is payable.

(2) The scale of charges and admission fees to be made and levied for admission to the Opera House or part of the Opera House may vary according to the days on which, the times at which, the function to which, and the uses or purposes for which, admission is sought or allowed.

## **26 Hiring**

The Trust may permit the Opera House or any part of the Opera House to be used by any person at such times and upon such terms and conditions and subject to payment to the Trust of such hiring charges as the Trust may think fit and proper, or as may be prescribed by the by-laws, for or in connection with any purpose approved by the Trust.

## **26A (Repealed)**

## **27 Personal liability**

- (1) A matter or thing done or omitted to be done by the Trust, a trustee, the principal officer or a person acting under the direction of the Trust or the principal officer does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject a trustee, the principal officer or a person so acting personally to any action, liability, claim or demand.
- (2) In this section, ***principal officer*** means the member of staff responsible for the day-to-day management and administration of the Opera House.

## **28 By-laws**

- (1) The Trust may make by-laws not inconsistent with this Act for and with respect to:
  - (a) the general management and control of the Opera House or any part of the Opera House, including but without limiting the generality of the foregoing, by-laws for or with respect to:
    - (i) the regulation of the use and enjoyment of the Opera House,

- (ii) the leasing, letting or hiring of the Opera House,
  - (iii) the securing of decency and order at the Opera House,
  - (iv) the removal of trespassers from the Opera House and of other persons causing annoyance or inconvenience at the Opera House,
  - (v) the regulation or prevention of the taking of intoxicants into the Opera House, or the consuming of intoxicants at the Opera House,
  - (vi) the regulation or prevention of the taking of animals into the Opera House,
  - (vii) the regulation, control or prohibition of the parking of vehicles on any land under the control of the Trust, the making of charges for such parking, and the collecting and receiving of such charges by the Trust or by other persons,
  - (viii) admission to the Opera House or any part of the Opera House, and the making and levying of charges or admission fees, and the collecting and receiving of such charges and fees by the Trust or by other persons,
- (b) regulating the affairs, business, management and meetings of the Trust and any committee thereof,
- (c) (Repealed)
- (d) generally any matters necessary or convenient for carrying out or giving effect to this Act.
- (2) The by-laws may impose a penalty not exceeding 50 penalty units for any breach of the by-laws.
- (2A) (Repealed)
- (3) A by-law has no effect unless approved by the Governor.

**Note—**

Any by-law made by a person or body that requires the approval of the Governor is a statutory rule for the purposes of the [Interpretation Act 1987](#). Accordingly, it must be published on the NSW legislation website to come into force.

- (4) (Repealed)
- (5) A by-law shall not apply to a part of the Opera House which has not been specified in a notification under section 5 (2).

## **28A Trespassing at Opera House**

A person who enters, or remains at, any part of the Opera House as a trespasser is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

### **28B Trespassing at Opera House with intent**

A person who enters, or remains at, any part of the Opera House as a trespasser with intent to:

- (a) cause damage to the Opera House, or
- (b) seriously disrupt the operations of the Opera House, or
- (c) commit any offence punishable by imprisonment or arising under the *Summary Offences Act 1988*,

is guilty of an offence.

Maximum penalty on indictment: imprisonment for 7 years.

### **28C Damage to Opera House**

A person who intentionally or recklessly damages the Opera House is guilty of an offence.

Maximum penalty on indictment: imprisonment for 5 years.

### **28D Penalty for attempt**

A person who attempts to commit an offence under section 28B or 28C is liable to the penalty provided for the offence concerned.

### **28E Proceedings for offences**

- (1) Proceedings for an offence against this Act or the by-laws, except sections 28B and 28C, are to be dealt with summarily before the Local Court.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 28B or 28C.

## **29 Savings and transitional provisions**

Schedule 2 has effect.

## **Schedule 1 Specific powers of the Trust**

(Section 4 (3), (4))

**(a)** To use or arrange for the use of the Opera House for:

- (i) the presentation of grand opera and ballet, and orchestral, instrumental, dramatic, choral and vocal concerts and recitals,
- (ii) the promotion and organisation of music, drama and dance festivals and similar

entertainments,

(iii) the holding of conferences and meetings,

(iv) performances, entertainments, displays, exhibitions, recitals, lectures, film-screenings, broadcasts, telecasts and other purposes calculated, in the opinion of the Trust, to provide for the cultural welfare or education of the participants or audience.

- (b)** To engage and enter into contracts with artists, entertainers, lecturers and performers to appear at the Opera House and to pay them such fees and remuneration as may be agreed upon.
- (c)** In or in connection with the Opera House and any entertainment or gathering therein to carry on the businesses of licensed victuallers, refreshment purveyors, caterers, tobacconists and confectioners and any like business.
- (d)** To give and contribute towards prizes, cups and other rewards or prizes for competition at any entertainment or gathering held at the Opera House.
- (e)** To grant rights and privileges to licensed victuallers, caterers, tobacconists, confectioners and other vendors to sell their wares at the Opera House upon such terms and conditions and subject to the payment of such charges as may be determined by the Trust.
- (f)** To install, use, work and maintain film cameras and projectors and broadcasting and television apparatus, and to grant the right of installing, using, working and maintaining the same at the Opera House upon such terms and conditions and subject to the payment of such charges as may be determined by the Trust.
- (g)** To print and publish or to arrange for the printing or publishing of plays, music, programmes, posters and advertisements and such other publications as the Trust may deem expedient and to acquire the copyright therein.
- (h)** To register, purchase or apply for or otherwise acquire either wholly or in part any invention, copyright, trade or other mark or design, patent, patent rights and privileges, licences, concessions or other like rights conferring any exclusive or non-exclusive or limited right to use any mark, device, brand, process or invention which may seem capable of being used in the exercise or in furtherance of any of the functions of the Trust or the acquisition of which may seem to be calculated directly or indirectly to benefit the Trust and to sell, dispose of, use, exercise and develop such rights or inventions or to grant licences or privileges in respect thereof.
- (i)** To enter into any contract or arrangement with any person for the purpose of promoting the objects of the Trust.

## **Schedule 2 Savings and transitional provisions**

(Section 29)

### **1 Initial term of office of additional trustee**

- (1) Despite section 6, the initial term of office of the additional trustee begins and ends (subject to subclause (2) and section 8) on such dates as are specified for those purposes in the additional trustee's instrument of appointment.

(2) The initial term of office is not to exceed 3 years.

(3) In this clause, **additional trustee** means the trustee appointed in consequence of the amendment made to section 6 by the [Statute Law \(Miscellaneous Provisions\) Act 2002](#).

**2 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act 2009](#)**

The amendment to section 6 (3) made by the [Statute Law \(Miscellaneous Provisions\) Act 2009](#) does not affect the term of office that a person holds as a trustee immediately before the amendment took effect.