

Art Gallery of New South Wales Act 1980 No 65

[1980-65]



New South Wales

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Provisions in force

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

Notes—

- **Does not include amendments by**
State Revenue and Other Legislation Amendment (Budget Measures) Act 2006 No 50 (not commenced)

Authorisation

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Art Gallery of New South Wales Act 1980 No 65



New South Wales

An Act to constitute the Art Gallery of New South Wales Trust and define its functions; to repeal the *Art Gallery of New South Wales Act 1958*; to make provision with respect to the administration of the Art Gallery; and for certain other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Art Gallery of New South Wales Act 1980*.

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

Art Gallery means the Art Gallery of New South Wales.

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

Director means the person employed in the Public Service as the Director of the Art Gallery.

functions includes powers, authorities and duties.

Trust means the Art Gallery of New South Wales Trust constituted by section 5.

trustee means a trustee referred to in section 6.

- (2) A reference in this Act to the exercise of a function includes, where that function is a

duty, the performance of that duty.

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

Part 2 The Art Gallery of New South Wales Trust

5 Constitution of Trust

(1) There is hereby constituted a corporation, to be known as the “Art Gallery of New South Wales Trust”.

(2) The Trust shall have and may exercise the functions conferred or imposed on it by or under this or any other Act or law.

6 Appointment and procedure

(1) The Trust shall consist of 11 trustees who shall be appointed by the Governor on the recommendation of the Minister and at least 2 of whom shall be knowledgeable and experienced in the visual arts.

(2) Schedule 1 has effect.

7 Principal objects of Trust

(1) The principal objects of the Trust are:

(a) to develop and maintain a collection of works of art, and

(b) to propagate and increase knowledge and appreciation of art.

(2) When acting in pursuance of its objects, the Trust shall give particular emphasis to the visual art of Australia and Asian or Pacific countries whose cultural traditions are of special interest to Australia.

8 Powers of Trust

(1) The Trust may:

(a) maintain, or make arrangements for the maintenance of, Trust property or property in the custody of the Trust and, in pursuance of its objects, acquire works of art and other property,

(b) promote and provide exhibitions, lectures, films, publications and other educational or cultural instruction or materials,

(c) provide professional advice and services to the public or to any person or body with respect to any matter concerning art or works of art and their maintenance and preservation,

(d) subject to any conditions the Trust imposes, permit the use of any part of the Art

Gallery or any branch thereof for activities of an educational or cultural nature, for social functions, State occasions or charitable or other promotional activities or for the holding of conferences or meetings,

- (e) permit the use of the Art Gallery or any branch thereof for the taking of photographs, the making of films or sound recordings and the production of television or radio programmes or material,
 - (f) in the Art Gallery or any branch thereof, provide, or permit the provision of, food or other refreshments and apply for, hold or dispose of any licence, permit or other authority in connection therewith,
 - (g) engage and enter into contracts with artists, entertainers, lecturers and performers:
 - (i) to appear at the Art Gallery or any branch thereof, or
 - (ii) in connection with any service provided under this section or otherwise in pursuance of the objects of the Trust,
 - (h) charge and receive fees or other amounts for or in connection with any advice or service provided, article sold or permission given by the Trust in its exercise of any of the functions conferred on it by this section, which fees and other amounts shall be the property of the Trust,
 - (i) lend works of art to, or borrow works of art from, art galleries or museums for exhibition, upon such conditions as may be agreed to, and
 - (j) enter into any contract or arrangement with any person for the purpose of carrying out or promoting the objects of the Trust.
- (2) Subject to this Act and the by-laws, the Trust shall have the control and management of the Art Gallery and of all property vested in the Trust.
- (3) The Trust may agree to the imposition of any condition on its acquisition of any property, except where the condition is inconsistent with its objects.
- (4) Where, by gift inter vivos, devise or bequest, the Trust acquires property, it may retain the property in the form in which it is acquired, subject to any condition agreed to by the Trust under subsection (3) in relation to the property.
- (5) The rule of law against remoteness of vesting does not apply to a condition to which the Trust has agreed under subsection (3).
- (6) The [Duties Act 1997](#) does not apply to or in respect of any gift inter vivos, devise or bequest made or to be made to the Trust.
- (7) The Trust may establish such committees as it thinks fit for the purpose of assisting it

to exercise its functions.

- (8) A person may be appointed to a committee whether or not the person is a trustee.
- (9) The trust may establish, control and manage branches or departments of the Art Gallery.
- (10) The Trust shall have and may exercise such functions, in addition to those specified in this section, as are reasonably necessary for the attainment of its objects, but may borrow money only in accordance with Part 4.
- (11) However, the Trust cannot employ any staff.

9 Dealings with property

- (1) In this section, **condition** means a condition to which the Trust has agreed under section 8 (3).
- (2) Subject to subsection (3), the Trust shall not sell, mortgage, demise or otherwise dispose of any property acquired by gift inter vivos, devise or bequest or any real property otherwise acquired, except:
 - (a) where the property was acquired without any condition—with the approval of the Governor (which may be given in respect of any case or class of cases), or
 - (b) where the property was acquired subject to a condition—in accordance with the condition or section 10.
- (3) Subject to section 8 (4), and except to the extent that it would be in breach of a condition, the Trust shall invest any of its funds not immediately required for the purposes of the Trust in any manner authorised by law for the investment of trust funds.

10 Disposal of certain property

- (1) Subject to subsection (2), where the Trust resolves that any property that has been acquired by the Trust subject to a condition to which the Trust has agreed under section 8 (3) is not required for the purposes of the Trust, the Trust may:
 - (a) sell the property and retain the proceeds of the sale as property of the Trust,
 - (b) exchange the property for other property,
 - (c) give the property to an educational institution (including an art gallery), or
 - (d) if the Trust is of the opinion that the property is of no commercial value—dispose of the property without valuable consideration,notwithstanding the condition subject to which the property was acquired.

- (2) The Trust shall not sell, exchange, give or dispose of any property under subsection (1) except with the consent of the Governor and in accordance with any condition the Governor may impose upon the grant of his or her consent.
- (3) The Governor may consent to the sale, exchange, gift or disposal of property for the purposes of this section and may impose any condition he or she thinks fit upon the grant of his or her consent.

Part 3 Administration

11 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.

12 Director

- (1) The Director is responsible for the administration and management of the Art Gallery and any services provided in conjunction therewith.
- (2) The Director shall be the chief executive officer of the Trust.
- (3) The Director is, in the exercise of his or her functions under this Act, responsible to the Trust.

13 Delegation by Trust

- (1) The Trust may, by instrument in writing, delegate to a trustee or to an authorised person the exercise of such of its functions (other than this power of delegation) as are specified in the instrument of delegation and may, by a like instrument, revoke wholly or partly any such delegation.
- (2) A delegation under this section may be made subject to such conditions or such limitations as to the exercise of any of the functions delegated, or as to time or circumstances, as are specified in the instrument of delegation.
- (3) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.
- (4) Notwithstanding any delegation under this section, the Trust may continue to exercise all or any of the functions delegated.
- (5) Any act or thing done or suffered by a delegate under this section has the same force and effect as if the act or thing had been done or suffered by the Trust and shall be

deemed to have been done or suffered by the Trust.

- (6) In this section, **authorised person** means the Director or a member of staff of the Trust.

Part 4 Finance

14 Endowment

- (1) For the purpose of providing a statutory fund to be applied by the Trust towards:

- (a) the purchase and acquisition of works of art,
- (b) the remuneration, if any, to be paid under clause 5 of Schedule 1 to trustees, deputies of trustees and members of committees established under section 8 (7) who are not trustees, and
- (c) subject to subsection (2), other expenditure incurred by the Trust,

there shall be paid by the Treasurer to the Trust an annual endowment of such amount as Parliament approves.

- (2) The statutory fund referred to in subsection (1) may not be applied towards:

- (a) the remuneration of members of staff of the Trust, or
- (b) general operating expenses, including those related to the maintenance of any property of the Trust.

- (3) The annual endowment referred to in subsection (1) shall be paid by such instalments as the Treasurer thinks fit.

- (4) Any money payable by the Treasurer under this section shall be paid out of money provided by Parliament.

15 (Repealed)

16 Trust instruments apply notwithstanding secs 17, 18

The terms of any instrument creating a trust with respect to a fund held by the Trust shall have effect notwithstanding sections 17 and 18.

17 Investment pools

- (1) The Trust may establish and maintain one or more investment pools for the collective investment of funds held by the Trust whether or not those funds are, or any of those funds is, subject to a trust.
- (2) The Trust may from time to time bring into or withdraw from an investment pool the whole or any part of any fund referred to in subsection (1).

- (3) Notwithstanding subsections (1) and (2), the Trust shall not bring into or retain in an investment pool the whole or any part of a fund subject to a trust 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* or any other Act authorising the investment of trust funds.

18 Distribution of income of investment pools

- (1) The Trust shall, at the time the whole or any part of a fund referred to in subsection (2) (a) is withdrawn from an investment pool, and, in any event, at least once a year, distribute the income of an investment pool.
- (2) Where the Trust distributes the income of an investment pool under subsection (1):
- (a) it shall, in respect of a fund the subject of a trust which specifies that the income from the investment of that fund shall be applied for a purpose other than the general purposes of the Art Gallery, credit the income of that investment pool to the account kept by it in respect of that fund proportionately according to the value of that fund or part at the date of distribution and the period for which that fund or part has formed part of the capital of that investment pool, and
- (b) it may, in respect of a fund, other than a fund referred to in paragraph (a), credit the income of that investment pool to any account kept by it.

19 Nature of funds not affected by pooling

The inclusion in an investment pool of the whole or any part of a fund held by the Trust does not affect:

- (a) the identity of that fund or part, or
- (b) any trust to which that fund or part is subject.

20, 21 (Repealed)

Part 5 Miscellaneous

22 (Repealed)

23 By-laws

- (1) The Governor 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 or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:
- (a) meetings of the Trust,
- (b) committees of the Trust,

- (c) the conditions upon which works of art or other property of the Trust may be borrowed, inspected or copied by any person,
 - (d) the admission (including charges therefor) of the public or any person to the Art Gallery or any part thereof or any branch or part thereof or any exhibition held by the Trust,
 - (e) the exclusion of the public or any person from the Art Gallery or any part thereof or any branch or part thereof or any exhibition held by the Trust,
 - (f) regulating or prohibiting the parking or movement of vehicles upon property of the Trust or land dedicated for the purposes of the Art Gallery,
 - (g) regulating or prohibiting the taking of photographs by the public or by any person in the Art Gallery or any part thereof or any branch or part thereof or in any place where an exhibition is held by the Trust, and
 - (h) the fees or other amounts to be charged for or in connection with any advice or service provided, article sold or permission given by the Trust.
- (2) A provision of a by-law may:
- (a) apply differently according to such factors as are specified in the by-law, or
 - (b) authorise any matter or thing to be from time to time determined, applied or regulated by any person specified therein.
- (3) A provision of a by-law may impose a penalty not exceeding 5 penalty units for a breach of the by-law.
- (4) Proceedings for an offence against a by-law are to be dealt with summarily before the Local Court.

24 Repeals

Each Act specified in Column 1 of Schedule 2 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

25 Savings, transitional and other provisions

Schedule 3 has effect.

Schedule 1 Provisions relating to trustees and procedure of the Trust

(Section 6 (2))

1 (Repealed)

2 Appointment of deputy

- (1) In the case of the illness or absence of any trustee the Minister may appoint a person as a deputy to act in the place of the trustee during his or her illness or absence.
- (2) A deputy appointed under this clause shall, while he or she is acting as a deputy, have all the functions of a trustee.
- (3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the place of a trustee, or as to the necessity or propriety of any appointment of a deputy, and all acts and things done or omitted by a deputy when so acting shall be as valid and shall have the same consequences as if they had been done or omitted by the trustee for whom the deputy is acting.

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

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

4 Term of office and casual vacancies

- (1) The term of office of a trustee shall be, and (unless he or she vacates his or her office during his or her term) a trustee shall hold office for, such period not exceeding 3 years as may be specified in the instrument appointing him or her.
- (2) Subject to subclause (3) of this clause and to clause 1, a trustee whose term of office has expired may be re-appointed as a trustee.
- (3) No trustee shall hold office for 4 consecutive terms.
- (4) On the occurrence of a vacancy in the office of a trustee otherwise than by the expiration of his or her term of office, the Governor may appoint a person to hold that office for the balance of his or her predecessor's term of office.
- (4A) For the purposes of subclause (3) only, an appointment under subclause (4) does not constitute (and is taken never to have constituted) an appointment for a term of office.
- (5) (Repealed)

5 Allowances for trustees

A trustee, a deputy of a trustee and a member of a committee established under section 8

(7) who is not a trustee are each entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of them.

6 Removal from office

The Governor may, for any cause which to the Governor seems sufficient, remove a trustee from office.

7 Vacation of office

A trustee shall be deemed to have vacated his or her office if he or she:

- (a) dies,
- (b) resigns his or her office by writing under his or her hand addressed to the Minister,
- (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 or estate for their benefit,
- (d) becomes a mentally incapacitated person,
- (e) is absent from 3 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 6 weeks after the latest of those meetings excused by the Trust for his or her absence from the meetings,
- (f) is removed from office by the Governor, or
- (g) (Repealed)

8 President and Vice-President

- (1) The President of the Trust shall be such trustee as the Minister appoints as President.
- (2) A President of the Trust holds office until his or her successor is appointed by the Minister or until he or she ceases to be a trustee, whichever first occurs.
- (3) At the first meeting of the Trust and at each meeting next following the expiry of the term of office of a Vice-President, the trustees shall elect a Vice-President from among their number.
- (4) The term of office of a Vice-President expires:
 - (a) if he or she vacates his or her office as trustee, or
 - (b) if his or her term of office as trustee during which he or she was elected as Vice-President expires, notwithstanding that he or she may be subsequently re-appointed as a trustee.

- (5) A retiring President or Vice-President is, while he or she is a trustee, eligible for re-appointment or re-election, as the case may be.
- (6) At a meeting of the Trust:
 - (a) the President,
 - (b) in the absence of the President—the Vice-President, or
 - (c) in the absence of both the President and Vice-President—a chairperson elected by trustees present at the meeting from among their number,shall preside.

9 Procedure, quorum etc

- (1) The procedure for the calling of meetings of the Trust and the conduct of business at those meetings shall, subject to this Schedule and any by-law, be as determined by the Trust.
- (2) (Repealed)
- (3) Subject to clause 10 (2) (b), 6 trustees shall form a quorum and 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 all the functions of the Trust.
- (4) The person presiding at a meeting of the Trust shall, in the event of an equality of votes, have, in addition to a deliberative vote, a second or casting vote.
- (5) A decision supported by a majority of the votes cast at a meeting of the Trust at which a quorum is present shall be the decision of the Trust.

10 Disclosure of interest

- (1) A trustee present at a meeting of the Trust who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Trust, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of more than 25 persons, shall, as soon as practicable after the commencement of the meeting, disclose the nature of his or her interest.
- (2) A disclosure under subclause (1) of this clause shall be recorded in the minutes of the Trust and the trustee:
 - (a) shall not take part, after the disclosure, in any deliberation or decision of the Trust with respect to that matter, and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Trust for any such deliberation or decision.

11 Minutes of meetings

The secretary to the Trust shall cause minutes of each meeting of the Trust to be recorded and preserved.

12 The Director

The Director:

- (a) is entitled to be present at each meeting of the Trust and is entitled to be heard by the Trust on any matter considered by the Trust, and
- (b) is an ex officio member of each committee of the Trust.

13 Common seal

The common seal of the Trust shall be kept by the secretary to the Trust.

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

Schedule 2 Repeals

(Section 24)

Column 1

Column 2

Year and number of Act	Short title of Act	Extent of repeal
1958 No 1	<i>Art Gallery of New South Wales Act 1958.</i>	The whole Act.
1973 No 2	<i>Art Gallery of New South Wales (Amendment) Act 1973.</i>	The whole Act.
1975 No 84	<i>Miscellaneous Acts (Administrative Changes) Amendment Act (No 2) 1975.</i>	Section 7.

Schedule 3 Savings, transitional and other provisions

(Section 25)

1 Definitions

In this Schedule:

commencement means the commencement of this Schedule.

former Act means the *Art Gallery of New South Wales Act 1958*, repealed by this Act.

former trustees means the trustees incorporated by section 4 of the former Act, under the name of “The Trustees of the Art Gallery of New South Wales”.

2 Construction of other instruments etc

A reference:

- (a) in any other Act, or in any by-law, regulation or ordinance or any other instrument or document whatever, to the former trustees in their capacity as trustees of any property under the former Act, or
- (b) to the former trustees in any instrument in relation to any gift inter vivos, devise or bequest, which gift, devise or bequest would, but for the enactment of this Act, have vested in the former trustees in their capacity as trustees of any property under the former Act,

shall be construed as a reference to the Trust.

3 Vesting of assets etc

- (1) For the purposes of subclause (2) of this clause, a reference in that subclause to the former trustees is a reference to those trustees in their capacity as trustees of any property under the former Act.
- (2) On and from the commencement:
 - (a) all property, whether real or personal, all rights and interests therein and all control and management thereof that, immediately before the commencement,

belonged to or was or were vested in the former trustees shall belong to and vest in the Trust,

- (b) all money and liquidated and unliquidated claims that, immediately before the commencement, was or were payable to or recoverable by the former trustees shall be money and liquidated and unliquidated claims payable to or recoverable by the Trust,
- (c) all money and liquidated and unliquidated claims for which the former trustees would, but for the enactment of this Act, have been liable shall be money and liquidated and unliquidated claims for which the Trust shall be liable,
- (d) all proceedings commenced by the former trustees and pending immediately before the commencement shall be deemed to be proceedings pending on the commencement by the Trust and all proceedings so commenced by any person against the former trustees and pending immediately before the commencement shall be deemed to be proceedings pending on the commencement by that person against the Trust,
- (e) all contracts, agreements, arrangements and undertakings entered into with the former trustees and in force immediately before the commencement shall be deemed to be contracts, agreements, arrangements and undertakings entered into with the Trust,
- (f) the Trust 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 former trustees might have done but for the enactment of this Act, and
- (g) all acts, matters and things done or omitted by, or done or suffered in relation to, the former trustees, being acts, matters or things not referred to in the foregoing provisions of this subclause, shall have the same force and effect as if they had been done or omitted by, or done or suffered in relation to, the Trust.

4 Agreement to certain conditions

Where any property, right or interest referred to in clause 3 (2) (a):

- (a) was acquired by the former trustees before the commencement in their capacity as trustees of any property under the former Act, by gift inter vivos, devise or bequest, subject to a condition agreed to by the former trustees, and
- (b) was held by the former trustees in such a capacity immediately before the commencement,

the Trust shall, on the commencement, be deemed to have agreed under section 8 (3), to

the condition subject to which the property, right or interest, as the case may be, was acquired.

5 Savings

- (1) The by-laws made under the former Act and in force immediately before the commencement shall, to the extent that they are not inconsistent with this Act, be deemed to be by-laws made under this Act.
- (2) A reference, however expressed, in any other Act or instrument to by-laws made under the former Act shall be construed as a reference to by-laws made under this Act.
- (3) Any person who:
 - (a) was employed as Director of the Art Gallery of New South Wales under the *Public Service Act 1979* immediately before the commencement, shall, on the commencement, be deemed to be appointed and employed as the Director pursuant to section 11 (1), and
 - (b) was employed under the *Public Service Act 1979* and was engaged in or in connection with the administration or management of any property, being property vested in the former trustees under the former Act, immediately before the commencement, shall, on the commencement, be deemed to be appointed and employed pursuant to section 11 (1).

6 Protection from liability

- (1) No matter or thing done, and no contract entered into, by the Trust and no matter or thing done by a trustee or by any other person acting under the direction of the Trust shall, if the matter or thing was done, or the contract was entered into, in good faith for the purposes of executing this Act, subject a trustee or person so acting personally to any action, liability, claim or demand.
- (2) No matter or thing done, and no contract entered into, by the former trustees and no matter or thing done by a former trustee or by any person acting under the direction of the former trustees shall, if the matter or thing was done, or the contract was entered into, in good faith for the purposes of executing the former Act, subject a former trustee or person so acting personally to any action, liability, claim or demand.

7 Accounts and report

The former trustees shall:

- (a) prepare:
 - (i) statements of all accounts in respect of the administration of property held by them under the former Act, made up to the commencement in a form approved by

the Auditor-General and exhibiting a true and complete view of the financial position and transactions in respect of that administration, for the period from 1st July immediately preceding the commencement and up to the commencement, and

(ii) a report of their work and activities in relation to the exercise of their functions under the former Act from 1st January immediately preceding the commencement and up to the commencement, and

(b) transmit the statements and report to the Trust as soon after the commencement as may be practicable.

8 Dissolution of offices of former trustees

The former trustees shall, on the commencement, cease to hold the offices to which they were last appointed under the former Act.

9 Members of Trust

The amendment to section 6 made by the [Statute Law \(Miscellaneous Provisions\) Act 2001](#) does not affect the appointment or term of office of a person who held office as a trustee immediately before the amendment took effect.

10 Additional trustees to take office on appointment

Clause 4 (5) of Schedule 1 does not apply to the initial term of a trustee appointed as a consequence of the amendment to section 6 made by the [Statute Law \(Miscellaneous Provisions\) Act 2001](#).