

# TASMANIA

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## TASMANIAN MUSEUM AND ART GALLERY ACT 2017

No. 40 of 2017

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# TASMANIAN MUSEUM AND ART GALLERY ACT

2017

No. 40 of 2017

An Act to provide for the control and management of the Tasmanian Museum and Art Gallery including the development and care of its collections, to repeal the *Tasmanian Museum Act 1950* and for related purposes

[Royal Assent 16 October 2017]

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

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## PART 1 – PRELIMINARY

### 1. Short title

This Act may be cited as the *Tasmanian Museum and Art Gallery Act 2017*.

### 2. Commencement

This Act commences on a day to be proclaimed.

### 3. Interpretation

In this Act, unless the contrary intention appears –

***applicable***, in relation to a direction, statement or plan mentioned in any provision, means the particular direction, statement or plan in effect at or during the time or period to which the provision applies or is being considered;

***Board*** means the Board of Trustees of the Tasmanian Museum and Art Gallery;

***care***, of material, includes the cataloguing, conservation, curation, maintenance, security and storage of the material;

***chairperson*** means the chairperson of the Board;

***commencement day*** means the day proclaimed under section 2;

***Director*** means the person for the time being holding or acting in the office referred to in section 23;

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***financial year*** means the 12-month period ending on 30 June in any year;

***former Act*** means the *Tasmanian Museum Act 1950*;

***former Board*** means the board of trustees established by section 3 of the former Act;

***gift includes any kind of donation***;

***material*** includes any item or part of the material;

***member*** means a member of the Board;

***Ministerial direction*** – see section 20;

***Ministerial statement of expectation*** – see section 19;

***notice*** means written notice;

***regulations*** means regulations made and in force under this Act;

***responsibility*** means a power, function or duty;

***stewardship function***, of the Board, means the function specified in section 8(3);

***strategic plan*** – see section 21;

***The Royal Society of Tasmania*** means the body of that name constituted under the *Royal Society Act 1911*;

***TMAG*** means the Tasmanian Museum and Art Gallery, being the institution formerly known as the Tasmanian Museum;

***TMAG collections***, or *collections* means all of the artworks, cultural, historical and scientific artefacts, specimens, records and other objects and material under the control, management and stewardship of the Board;

***TMAG Foundation*** means the incorporated association or body corporate established under section 33;

***TMAG objectives*** means the institutional objectives of TMAG set out in section 5;

***TMAG staff*** means the persons for the time being appointed or employed under section 25.

#### 4. Act binds Crown

This Act binds the Crown and, so far as the legislative power of Parliament permits, in all its other capacities.

## **5. Institutional objectives**

The main objectives of the Tasmanian Museum and Art Gallery are to –

- (a) care for and develop the TMAG collections; and
- (b) acquire, collect and procure works, objects and specimens relating to history, the arts, the natural sciences, technology, archaeology and Aboriginal cultural heritage, with particular emphasis on material that is uniquely Tasmanian or of relevance to Tasmania; and
- (c) exhibit, promote, disseminate and otherwise make available the TMAG collections and, from time to time, material loaned to TMAG by other institutions; and
- (d) exhibit, promote, disseminate and otherwise make available information relating to the work of TMAG; and
- (e) arrange for, promote and support the educational use of material relating to history, the arts, the natural sciences, technology, archaeology and Aboriginal cultural heritage, with particular emphasis on material that is uniquely Tasmanian or of relevance to Tasmania; and
- (f) conduct, arrange for, promote and support research, educational and interpretative activities relating to history, the arts, the natural sciences, technology, archaeology and Aboriginal cultural heritage.

**PART 2 – BOARD OF TRUSTEES OF  
TASMANIAN MUSEUM AND ART GALLERY**

***Division 1 – The Board***

**6. Continuation of Board**

- (1) The board of trustees established by section 3 of the former Act continues under the name “Board of Trustees of the Tasmanian Museum and Art Gallery”.
- (2) The Board –
  - (a) is a body corporate with perpetual succession; and
  - (b) may sue and be sued in its corporate name; and
  - (c) is an instrumentality of the Crown.
- (3) The Board may have a seal and, if so –
  - (a) it is to be kept and used as authorised by the Board; and
  - (b) all courts and persons acting judicially must take judicial notice of the imprint of the seal on a document and presume that it was duly sealed by the Board.

**7. Membership of Board**

- (1) The Board consists of such number of members, not exceeding 7 but not fewer than 5, as the Minister appoints.
- (2) In making Board appointments, the Minister is to consult, and seek nominations from –
  - (a) The Royal Society of Tasmania; and
  - (b) such other persons as the Minister thinks fit having regard to the need for the Board to have at least one member who can appropriately represent the interests of the Tasmanian community.
- (3) In making Board appointments, the Minister is to ensure that the members, collectively, have expertise in research relevant to the TMAG collection in addition to qualifications or experience in, or expert knowledge of, most of the following matters:
  - (a) art;
  - (b) Tasmanian history and cultural heritage, including Aboriginal cultural heritage;
  - (c) natural science;

- (d) business or financial management;
  - (e) commercial or corporate law;
  - (f) marketing or fundraising;
  - (g) public sector administration;
  - (h) community representation;
  - (i) education.
- (4) The Minister is to appoint a member as chairperson.
- (5) Schedule 1 has effect in respect of the membership of the Board.
- (6) Schedule 2 has effect in respect of meetings of the Board.

## **8. Functions of Board**

- (1) The Board has the following strategic functions:
- (a) to determine the strategic direction of TMAG in accordance with the objectives from time to time set by Government, whether through Ministerial statements of expectation or otherwise;
  - (b) to ensure that the strategic performance of TMAG meets the objectives from time to time set by Government, whether through Ministerial statements of expectation or otherwise;
  - (c) to nurture, enhance and promote the value of TMAG as a key asset of the Tasmanian community;
  - (d) to encourage and promote community access to, involvement in and support for TMAG;
  - (e) to engage in, or facilitate or make arrangements for, such marketing and fund raising activities for TMAG as may advance and promote, and not detract from or conflict with, the TMAG objectives and the Board's overall functions;
  - (f) to perform such other strategic functions as it may be given by this or any other Act.
- (2) The Board is to oversee –
- (a) the control and management of TMAG, including TMAG property, infrastructure and equipment; and
  - (b) the performance of any other managerial and administrative functions as may

be given by this or any other Act.

(3) The Board is also the steward of the TMAG collections and, without limiting the generality of this stewardship function, is responsible for –

(a) the care of the collections; and

(b) the development and improvement of the collections, including, as appropriate, the acquisition and disposal of material for and from the collections in accordance with Division 2 of this Part; and

(c) the promotion and display of the collections; and

(d) the interpretation of the collections; and

(e) the support and promotion of research into matters relevant to TMAG and its collections; and

(f) the undertaking, or promotion and support, of research into matters of cultural, scientific and historical interest concerning material in the collections.

(4) In the performance of its functions, the Board is to have constant regard to the TMAG objectives and act in a way that best meets and advances those objectives.

## **9. Powers of Board**

(1) The Board has power to –

(a) acquire, hold, dispose of and otherwise deal with property; and

(b) enter into contracts; and

(c) enter into cooperative arrangements with other museums, galleries and institutions, whether in Australia or elsewhere, including arrangements for the loan of exhibits or collections; and

(d) control access to and the uses to be made of TMAG premises and the TMAG collections; and

(e) set and charge reasonable fees and charges in connection with the discharge of its responsibilities, including admission fees to TMAG premises and exhibitions; and

(f) do all things necessary or convenient to discharge its responsibilities.

(2) However, the Board has no power to sell, mortgage or charge any land or building without the prior written consent of the Minister.

(3) The Board has –

(a) such other powers as it may be given by this or any other Act; and

(b) such other constraints on the exercise of its powers as are imposed by this Act.

(4) In the exercise of its powers, the Board is to have constant regard to the TMAG objectives and act in a way that best meets and advances those objectives.

## **10. Advisory committees**

(1) The Board may establish such committees as it thinks fit to advise it on any matter relevant to the discharge of its responsibilities.

(2) A committee comprises such members and other persons as the Board appoints.

(3) Without limiting subsection (2), the Director or any member of TMAG staff may be a member of a committee.

(4) The Board may give written directions to a committee and it is to comply with those directions.

(5) A committee is to keep accurate minutes of its proceedings.

(6) Except as provided by this Act, a committee may regulate its own proceedings.

(7) The Board may discharge, alter or reconstitute any committee.

## **11. Protection from liability**

(1) A member of the Board does not incur any personal liability for any act done or purported or omitted to be done by the member in good faith in the exercise or performance or purported exercise or performance of any responsibilities relating to or arising from his or her role as a member.

(2) Subsection (1) does not preclude the Crown or the Board from incurring a liability that a member would, but for that subsection, incur.

## **12. Delegation**

(1) The Board may delegate any of its powers or functions, other than this power of delegation, to any member or the Director.

(2) The Board is not to delegate a power or function to a committee.

***Division 2 – The TMAG collections***

**13. Acquisition of material**

The Board in its discretion may obtain material for the TMAG collections by –

- (a) purchase; or
- (b) exchange; or
- (c) natural collection; or
- (d) the acceptance of gifts, loans or deposits pursuant to section 14; or
- (e) the retention of unclaimed material pursuant to section 15; or
- (f) requiring a transfer pursuant to section 16.

**14. Acceptance of gifts, &c.**

(1) The Board, on behalf of the Crown, may –

- (a) accept or decline gifts relating to the discharge of its responsibilities, whether of money or property and whether from living persons or by bequest or devise and whether on trust or otherwise; and
- (b) agree to and carry out any lawful condition of any gift that it accepts.

(2) The rule of law known as the rule against perpetuities does not apply to any condition of a gift accepted by the Board.

(3) The *Duties Act 2001* does not apply to or in respect of any gift accepted by the Board.

(4) The Board, on behalf of the Crown, may accept or decline loans and deposits of material relevant to the discharge of its responsibilities.

**15. Unclaimed material**

(1) This section applies to –

- (a) unsolicited material that has at any time been left at TMAG premises; and
- (b) material that TMAG has at any time accepted or apparently accepted on loan or deposit, which is of unknown or uncertain provenance and which the Board no longer necessarily wishes to hold; and
- (c) material of known provenance that TMAG has at any time accepted or apparently accepted on loan or deposit, which appears subsequently to have been forgotten about or abandoned by its owner and which the Board no longer

necessarily wishes to hold.

(2) The following provisions apply:

(a) the Board is to try to locate the owner of the material (which attempt is required to be reasonable but not exhaustive, costly or sustained);

(b) if within a prescribed period the Board is able to locate the owner of the material, it is to give the owner a reasonable opportunity to reclaim the material (whereupon the Board may release it);

(c) if within a prescribed period the Board is able to locate the owner of the material but there are competing claims of ownership, the Board is to continue to hold the material pending the resolution of those claims by agreement, proceedings or otherwise and the consequential due reclamation of the material (whereupon the Board may release it);

(d) if within a prescribed period the Board is able to locate a person who might be the owner of the material, it is to give the person a reasonable opportunity to establish their right of ownership and reclaim the material (whereupon the Board may release it);

(e) the Board may retain the material or dispose of the material when and as it thinks fit (including, if necessary, by destruction) if –

(i) it is unable, within a prescribed period, to locate the owner of the material; or

(ii) it is able, within a prescribed period, to locate the owner of the material but the owner does not wish or bother to reclaim the material as provided by paragraph (b); or

(iii) it is able, within a prescribed period, to locate the owner of the material but there are competing claims of ownership and these are not duly resolved within a secondary prescribed period; or

(iv) it is able, within a prescribed period, to locate a person who might be the owner of the material but that person fails or does not bother to establish their right of ownership and reclaim the material within a secondary prescribed period;

(f) subject to any order that a court may make to the contrary, if and when the Board decides to take an action referred to in paragraph (e) –

(i) the material is taken to have been permanently abandoned by its owner;  
and

- (ii) property in the material is taken to have vested in the Board; and
  - (iii) all persons other than the Board are taken to have forfeited all their right, title and interest in the material;
- (g) notwithstanding the other provisions of this subsection, the Board may at any time dispose of the material (if necessary, by destruction) if it is satisfied that the material is too hazardous or degraded to hold or the disposal is mandated by law;
- (h) no action lies against the Board in respect of –
- (i) the holding, retention, release or disposal of the material in accordance with this section; or
  - (ii) any damage to or deterioration or devaluation of the material whilst it is held by the Board.
- (3) For the purposes of this section, the Board is to –
- (a) draw up suitable administrative procedures; and
  - (b) have the administrative procedures approved by the Minister; and
  - (c) act in accordance with the administrative procedures as so approved.
- (4) In this section –
- locate* includes identify and contact;
- owner*, of material, means the person who is legally entitled, or most legally entitled, to immediate possession of the material;
- prescribed period* means a period of 6 months or such longer period of time as the regulations may specify;
- proceedings* includes an arbitration or mediation;
- secondary prescribed period* means a period of 12 months or such longer period of time as the regulations may specify.

## **16. Transfers from Government Agencies**

- (1) A Head of Agency is to ensure that the Agency does not dispose of any material that is or might be material of State significance without first giving the Board notice of the intended disposal.
- (2) For the purpose of subsection (1), the Head of Agency is to presume that material

held by the Agency is or might be of State significance unless he or she is satisfied on reasonable grounds that it is not material of State significance.

(3) The purpose of the notice of intended disposal is to give the Board an opportunity to assess the material to determine if it would be of value to the TMAG collections.

(4) Within 30 business days after being given the notice of intended disposal (the *assessment period*), the Board is to assess the material and determine whether or not it should be acquired for the TMAG collections.

(5) For the purposes of subsection (4), during the assessment period, the Head of Agency is required to –

(a) ensure that the Agency retains the material; and

(b) give the Board any information that it may by notice reasonably require | concerning the material; and

(c) give members of the Board and TMAG staff (and any expert consultants to TMAG) free and reasonable access to assess the material.

(6) The Minister, on the written application of the Board made within the assessment period, may extend that period, once, by a period not exceeding 15 business days if he or she is satisfied having regard to the circumstances of a particular case that 30 business days does not give the Board sufficient time in which to properly assess the relevant material.

(7) If, within 7 business days after the assessment period ends, the Board notifies the Head of Agency that the material is required for the TMAG collections, he or she is to arrange for the material to be transferred to the Board on such terms as the Head of Agency and the Board agree or, if they cannot agree, as the Minister directs.

(8) If, within 7 business days after the assessment period ends, the Board notifies the Head of Agency that the material is not required for the TMAG collections or it fails to give the Head of Agency any notice in the matter, the Agency may dispose of the material without further reference to the Board.

(9) For the purpose of this section –

(a) a Head of Agency may at any time ask the Board for a determination as to whether particular material held by the Agency is material of State significance, and the Board may make or arrange for the making of that determination; and

(b) in any case where the Board notifies a Head of Agency that any material held by the Agency is not required for the TMAG collections, it may nevertheless make recommendations to the Head of Agency regarding the suitable disposal of

the material if it thinks there is a special need to do so, and the Head of Agency may have regard to those recommendations.

(10) Nothing in this section is to be taken as affecting –

(a) the operation of the *Archives Act 1983*; or

(b) any law relating to the granting of access to, or the safe disposal of, hazardous material; or

(c) any directory or mandatory disposal of material obligations that an Agency may have under another law of the State or a law of the Commonwealth; or

(d) a specific contractual obligation relating to the disposal of material by an Agency, whether on its own behalf or on behalf of the Crown.

(11) A Head of Agency is to take reasonable steps to ensure that the Agency's officers and employees, especially those having responsibilities relating to asset management, property and disposals, are aware of the provisions of this section.

(12) In this section –

**Agency** means –

(a) a Government department specified in column 1 of Part 1 of Schedule 1 to the *State Service Act 2000*; or

(b) any State authority specified in column 1 of Part 2 of Schedule 1 to the *State Service Act 2000* that is declared by the regulations to be an Agency to which this section applies;

**assess**, material, includes inspecting and examining the material and, as circumstances may require, valuing and establishing the provenance of the material and the non-destructive testing of the material;

**business day** means a day other than –

(a) a Saturday or Sunday; or

(b) a day that, under the *Statutory Holidays Act 2000*, is to be observed as a public holiday throughout Tasmania generally;

**Head of Agency** has the same meaning as in the *State Service Act 2000*;

**material of State significance** means material that is or may be of major artistic, cultural, heritage, scientific, technological, archaeological or other importance to the State;

**notice of intended disposal** means a notice under subsection (1).

## **17. Disposal of material**

(1) The Board in its discretion may dispose of material from the TMAG collections if it is satisfied that –

- (a) the material is unfit, unsafe or unsuitable for the collections; or
- (b) the material is no longer required as part of the collections; or
- (c) there are other compelling reasons for effecting the disposal.

(2) A disposal may be effected by whichever of the following means the Board in its discretion thinks is most appropriate in the circumstances:

- (a) donation;
- (b) transfer;
- (c) exchange;
- (d) surrender;
- (e) repatriation;
- (f) sale;
- (g) destruction.

(3) However, subsection (2)(g) applies only if –

- (a) the Board is satisfied on reasonable grounds that the material has no market value or only negligible market value; or
- (b) the Board is satisfied that for safety, legal, public policy or other compelling reasons the material should be destroyed.

(4) Regardless of the intended method of disposal, where the Board reasonably suspects or is satisfied that the market value of the material exceeds or might exceed the threshold value under section 18, then –

- (a) unless subsection (2)(g) applies, the Board is to notify the Minister of its intention to effect the disposal, the reasons for it, and any relevant advice, valuation or other documentation; and
- (b) the Board is not to effect the disposal unless the Minister, by notice to the Board, approves the disposal.

(5) To make a decision under subsection (4)(b), the Minister may seek such further advice from the Board, and such other advice, as he or she thinks fit.

(6) If the Minister does not approve an intended disposal to which subsection (4)

applies, the Minister is to notify the Board of the reasons for so doing.

(7) The Board may include a notice of a disposal in its annual report, together with supporting explanations, and may publish such other notices regarding the disposal as it thinks fit.

### **18. Threshold value**

(1) The Minister, after consulting the Board –

(a) is to make a determination setting a threshold value for section 17(4); and

(b) may from time to time make determinations setting a revised threshold value for that purpose.

(2) The Minister is to notify the Board of each determination under subsection (1).

(3) The method of notification for subsection (2) is in the Minister’s discretion and, without limiting this, the determination may be incorporated in a Ministerial direction or Ministerial statement of expectation.

### ***Division 3 – Strategic oversight and direction***

### **19. Ministerial statements of expectation**

(1) The Minister, by no later than 3 months before the beginning of any financial year, may give the Board a statement setting out the Minister’s expectations for TMAG and the Board for that financial year (***Ministerial statement of expectation***).

(2) In preparing a Ministerial statement of expectation, the Minister is to have regard to the TMAG objectives and the Board’s obligations in respect of those objectives.

(3) A Ministerial statement of expectation is not to purport to exert control or influence over the Board’s stewardship function, particularly as regards the content of the TMAG collections.

(4) A Ministerial statement of expectation is not to purport to exert control or influence over –

(a) the exercise by the Board of its powers under section 9(1)(a), (b) or (c); or

(b) the content of events or activities conducted, promoted or supported by the Board; or

(c) the manner in which the Board is to deal with gifts accepted pursuant to section 14.

- (5) The Board is to discharge its responsibilities in respect of a financial year consistently with the applicable Ministerial statement of expectation.
- (6) The Minister, on his or her own motion or at the request of the Board, may at any time –
- (a) amend a Ministerial statement of expectation; or
  - (b) revoke a Ministerial statement of expectation.
- (7) A Ministerial statement of expectation and any amendment or revocation thereof is to be in writing and signed by the Minister.
- (8) An amendment to or revocation of a Ministerial statement of expectation takes effect on such day as is specified in the instrument of amendment or revocation.
- (9) The Minister and the Board may publish Ministerial statements of expectation as, either jointly or severally, they think fit.

## **20. Ministerial directions**

- (1) The Minister may give the Board directions at any time (*Ministerial directions*) regarding the discharge of its responsibilities, including its discretionary responsibilities.
- (2) In preparing a Ministerial direction, the Minister is to have regard to the TMAG objectives and the Board's obligations in respect of those objectives.
- (3) A Ministerial direction is not to purport to exert control or influence over the Board's stewardship function, particularly as regards the content of the TMAG collections.
- (4) Also, a Ministerial direction is not to purport to exert control or influence over –
- (a) the exercise by the Board of its powers under section 9(1)(a), (b) or (c); or
  - (b) the content of events or activities conducted, promoted or supported by the Board; or
  - (c) the manner in which the Board is to deal with gifts accepted pursuant to section 14.
- (5) The Board is to comply with a Ministerial direction.
- (6) A Ministerial direction is to be in writing and signed by the Minister.
- (7) A Ministerial direction is not to conflict with an applicable Ministerial statement of expectation.
- (8) The Minister is to cause a copy of a Ministerial direction to be laid before each

House of Parliament within 10 sitting days after it is given.

## **21. Strategic plans**

- (1) Every third financial year, the Board is to prepare a plan (*strategic plan*).
- (2) The strategic plan may be in respect of the following 3 financial years or, if the Board so determines, a greater number of financial years (*the planning period*).
- (3) In preparing a strategic plan, the Board is to have regard to the TMAG objectives and its obligations in respect of those objectives.
- (4) A strategic plan is to include the following:
  - (a) a statement of the Board's objectives for the planning period with particular regard to the general management, operation, financial sustainability and development of TMAG including the Board's financial plans;
  - (b) strategies for attaining those objectives;
  - (c) strategies for monitoring progress towards the attainment of those objectives and for managing risk and measuring success;
  - (d) an appraisal, if applicable, regarding the effectiveness and the attainment of the objectives of the previous strategic plan.
- (5) A strategic plan is to be consistent with –
  - (a) any applicable Ministerial statement of expectation; and
  - (b) any applicable Ministerial directions.
- (6) A strategic plan is to be in such form as the Board thinks fit.
- (7) In preparing a strategic plan, the Board –
  - (a) is to consult the Minister; and
  - (b) may consult such other persons as it thinks fit.
- (8) After preparing a strategic plan, the Board is to submit a draft of it to the Minister for approval.
- (9) The Minister may –
  - (a) approve the draft strategic plan as submitted; or
  - (b) require the Board to amend the draft strategic plan and resubmit it for approval.

- (10) To avoid doubt, the Minister’s power under subsection (9)(b) may be exercised more than once.
- (11) Once a draft strategic plan has been approved by the Minister for a planning period –
- (a) it takes effect as the strategic plan of the Board for that planning period; and
  - (b) the Board is to act during that planning period in accordance with the strategic plan.
- (12) The Board, having regard to changes of circumstance or for other reasonable cause, may prepare an amendment to its strategic plan at any time.
- (13) Subsections (7), (8), (9) and (10) have the same application to an amendment as they have to the plan itself and the amendment takes effect once it has been approved by the Minister.
- (14) The Board may publish a strategic plan as it thinks fit.

## **22. Annual business plans**

- (1) The Board, on or before 31 March in each financial year, is to prepare a business plan for the following financial year.
- (2) In preparing a business plan, the Board is to have regard to the TMAG objectives and the Board’s obligations in respect of those objectives.
- (3) A business plan is to –
- (a) be consistent with the applicable strategic plan, the applicable Ministerial statement of expectation and any applicable Ministerial directions; and
  - (b) include a statement of the manner in which the Board is to meet the business and financial objectives of the applicable strategic plan or, for the final year of a planning period under section 21, its next strategic plan.
- (4) After preparing a business plan, the Board is to submit a draft of it to the Minister for approval.
- (5) The Minister may –
- (a) approve the draft business plan as submitted; or
  - (b) require the Board to amend the draft business plan and resubmit it for approval.
- (6) To avoid doubt, the Minister’s power under subsection (5)(b) may be exercised

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more than once.

(7) Once a draft business plan has been approved by the Minister for a financial year –

(a) it takes effect as the business plan of the Board for that financial year; and

(b) the Board is to act during that financial year in accordance with the business plan.

(8) The Board, having regard to changes of circumstance or for other reasonable cause, may prepare an amendment to its business plan at any time.

(9) Subsections (4), (5) and (6) have the same application to an amendment as they have to the plan itself and the amendment takes effect once it has been approved by the Minister.

(10) The Board may publish a business plan as it thinks fit.

## **PART 3 – ADMINISTRATION**

### ***Division 1 – Staff support***

#### **23. TMAG Director**

Subject to and in accordance with the *State Service Act 2000*, a person is to be appointed as Director of the Tasmanian Museum and Art Gallery for the purposes of this Act.

#### **24. Role of Director**

- (1) The Director is responsible to the Board for the general administration and management of TMAG.
- (2) The Director is to act as secretary to the Board and, in that capacity, may attend any meeting of the Board unless the Board, in respect of a particular meeting or particular business before it at a meeting, decides otherwise.
- (3) The Director is to –
  - (a) comply with any directions given to the Director by the Board; and
  - (b) discharge any responsibilities delegated to the Director by the Board; and
  - (c) discharge such other responsibilities as the Director may be given by this or any other Act.
- (4) The Board and Director may enter into an agreement relating to the Board's expectations on the discharge of the Director's responsibilities.

#### **25. TMAG staff**

- (1) Subject to and in accordance with the *State Service Act 2000*, persons may be appointed or employed for the purposes of this Act.
- (2) The Director may give the persons so appointed or employed directions relating to their responsibilities and those persons are to comply with those directions.

### ***Division 2 – Finance and reporting***

#### **26. Treasurer's instructions**

- (1) Subject to this section, Treasurer's instructions apply to and in respect of the Board as if it were an Agency within the meaning of the *Financial Management and Audit*

*Act 1990.*

(2) The Treasurer, by notice to the Board, may modify the Treasurer's instructions in their application to the Board.

(3) If the Treasurer gives the Board a notice under subsection (2) modifying the Treasurer's instructions in their application to the Board, the Treasurer's instructions that apply to and in respect of the Board are to be taken to be, for the purposes of this Act and the *Financial Management and Audit Act 1990*, modified in accordance with the notice.

(4) In this section –

*Treasurer's instructions* means Treasurer's instructions under the *Financial Management and Audit Act 1990*.

## **27. Accounts**

The Board may open and maintain such authorised deposit-taking institution accounts as it considers necessary.

## **28. Funds**

The funds of the Board consist of –

- (a) any money provided by the State; and
- (b) any money received by the Board in connection with the discharge of its responsibilities; and
- (c) any money received from any other source.

## **29. Investment**

Subject to section 16 of the *Tasmanian Public Finance Corporation Act 1985*, the Board may invest any funds held by it of the kind referred to in section 28(b) or (c) and any interest accumulated in respect of those funds in any manner that is consistent with –

- (a) sound commercial practice; and
- (b) any instructions issued by the Minister.

### **30. Accounting records**

The Board is to –

- (a) keep accounting records that correctly record and explain its transactions (including any transactions as trustee) and financial position; and
- (b) keep those records in a manner that –
  - (i) allows true and fair accounts of the Board to be prepared from time to time; and
  - (ii) allows the accounts of the Board to be conveniently and properly audited or reviewed; and
  - (iii) subject to any contrary written direction of the Treasurer, complies with Australian Accounting Standards; and
  - (iv) complies with any written directions of the Minister or Treasurer; and
- (c) retain those records for a period of not less than 7 years after the completion of the transaction to which they relate or for such longer period as the Treasurer may determine and notify to the Board.

### **31. Annual report**

- (1) The Board is to prepare an annual report for each financial year.
- (2) The annual report is to include at least the following:
  - (a) a report on TMAG and the Board’s activities and performance for the financial year, with particular reference to the TMAG objectives and the Board’s stewardship function;
  - (b) the financial statements of the Board for the financial year;
  - (c) a copy of the Auditor-General’s report on those financial statements, as prepared and provided under section 19 of the *Audit Act 2008*;
  - (d) the Board’s business plan for the financial year (or a summary or particulars thereof);
  - (e) the Board’s strategic plan for the period encompassing the financial year (or a summary or particulars thereof);
  - (f) the Ministerial statement of expectation for the financial year (or a summary or particulars thereof);
  - (g) particulars of any Ministerial directions issued in or in respect of the financial

year and any actions taken by the Board in respect of those directions;

(h) any information that the Minister or Treasurer has, by notice to the Board, required to be put in the report.

(3) The Board is to give the annual report to the Minister by no later than 31 October after the end of the financial year.

(4) The Minister is to cause a copy of the annual report to be laid before each House of Parliament within the first 10 sitting-days of that House after he or she receives the report.

(5) Section 36 of the *State Service Act 2000* does not apply in respect of the Board.

## **PART 4 – MISCELLANEOUS**

### **32. Support for Royal Society of Tasmania**

The Board may make arrangements with The Royal Society of Tasmania for services and facilities of the Board, including rooms within TMAG premises, to be made available to that body.

### **33. Establishment of TMAG Foundation**

(1) The Board may establish, or participate in the running of, an incorporated association or a body corporate for the main purpose of raising funds and receiving donations to further the TMAG objectives.

(2) A body or association established under subsection (1) must not operate so as to hinder or detract from the TMAG objectives.

(3) A body or association established under subsection (1) is to be known as the TMAG Foundation, or by such other name as the Minister approves.

### **34. Regulations**

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may make additional provision in respect of notices and procedures under and for section 16.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, as specified in the regulations.

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(4) The regulations may authorise any matter to be from time to time determined by the Minister or the Board.

(5) The regulations may –

(a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and

(b) provide for any of those savings or transitional matters to take effect on the commencement day or on a later day specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

### **35. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

(a) the administration of this Act is assigned to the Minister for the Arts; and

(b) the department responsible to that Minister in relation to the administration of this Act is the Department of State Growth.

### **36. Transitional**

Schedule 3 has effect in respect of transitional provisions.

### **37. Consequential amendments**

The legislation specified in Schedule 4 is amended as specified in that Schedule.

### **38. Legislation repealed**

The legislation specified in Schedule 5 is repealed.

## **SCHEDULE 1 – MEMBERSHIP OF BOARD**

### Section 7(5)

#### **1. Term of office**

(1) A member is appointed for such period, not exceeding 3 years, as is specified in the member's instrument of appointment and, if eligible, may be reappointed.

(2) A member may serve any number of terms as chairperson but not more than 2 such terms, of whatever duration, in succession.

#### **2. Holding other office**

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

#### **3. State Service Act 2000**

(1) The *State Service Act 2000* does not apply in respect of a member in his or her capacity as a member.

(2) A person may hold the office of member in conjunction with State Service employment.

#### **4. Remuneration and conditions of appointment**

(1) A member is entitled to be paid such remuneration and allowances as the Minister determines.

(2) A member who is a State Service employee or State Service officer is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.

(3) A member holds office on such conditions in respect of matters not provided for by this Act as are specified in the member's instrument of appointment.

#### **5. Vacation of office**

(1) A member vacates office if he or she –

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- (a) dies; or
  - (b) resigns by notice given to the Minister; or
  - (c) is removed from office under subclause (2) or (3).
- (2) The Minister may remove a member from office if the member –
- (a) is absent from 3 consecutive meetings of the Board without the permission of the other members of the Board; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
  - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer or a fine of 200 penalty units or more; or
  - (d) fails to disclose a pecuniary interest as required under clause 7 of Schedule 2; or
  - (e) has benefited from, or claimed to be entitled to benefit from, a contract made by or on behalf of the Board, other than a contract for a good or service ordinarily supplied by the Board and supplied on the same terms as that good or service is ordinarily supplied to other persons in the same situation.
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.
- (4) A member must not be removed otherwise than in accordance with this clause.

**6. Filling of vacancies**

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

**7. Validation of proceedings, &c.**

- (1) An act or proceeding of the Board or of a person acting under any direction of the Board is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Board or of a person acting under a direction of the Board are, despite the subsequent discovery of a defect in the appointment of a

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member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Board had been fully constituted.

**8. Presumptions**

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Board; or
- (b) the appointment of any member.

## **SCHEDULE 2 – MEETINGS OF BOARD**

### Section 7(6)

#### **1. Convening of meetings**

- (1) The chairperson, after giving each member reasonable notice of a meeting –
  - (a) may convene a meeting at any time; and
  - (b) must convene a meeting when requested to do so by 2 or more other members.
- (2) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of the meeting, by –
  - (a) three or more other members; or
  - (b) a person authorised by the Board to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Board.

#### **2. Presiding at meetings**

- (1) The chairperson is to preside at all meetings of the Board at which he or she is present.
- (2) If the chairperson is not present at a meeting of the Board, a member elected by the members present at the meeting is to preside.

#### **3. Quorum and voting at meetings**

- (1) At a meeting of the Board, a quorum is constituted by a majority of the total number of members appointed.
- (2) A meeting of the Board at which a quorum is present is competent to transact any business of the Board.
- (3) At a meeting of the Board –
  - (a) the member presiding has a deliberative vote only; and
  - (b) a question is decided by a majority of votes of the members present and voting.
- (4) At a meeting of the Board where a member is excluded from being present and taking part in the consideration and decision of the Board in respect of a matter, a

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quorum for the purposes of considering and making a decision in respect of that matter is constituted by the number of members specified as constituting a quorum in subclause (1) less the number of members so excluded.

#### **4. Conduct of meetings**

(1) Except as provided by this Act, the Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Board may permit members to participate in a particular meeting or all meetings by –

(a) telephone; or

(b) video conference; or

(c) any other means of communication approved by the Board.

(3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

(4) Without limiting subclause (1), the Board may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

(5) Nothing in section 24(2) prevents the Board from seeking, at any meeting at which the Director is present and acting as secretary to the Board, advice or information from the Director.

#### **5. Absences**

(1) A member is to take reasonable steps to inform the chairperson if he or she will, or is likely to be, unable to attend a meeting.

(2) The Board may permit a member to be absent from more than 3 consecutive meetings but such permission is not to be granted retrospectively.

(3) To avoid doubt, a permission under subclause (2) is taken not to be retrospective if it is granted at any time before the third consecutive meeting that the member does not attend.

#### **6. Minutes**

The Board is to keep accurate minutes of its meetings.

## **7. Disclosure of interests**

(1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Board.

Penalty: Fine not exceeding 10 penalty units or a term of imprisonment not exceeding one month, or both.

(2) Unless the Board otherwise determines, a member who has made a disclosure under subclause (1) in respect of a matter must not –

- (a) be present during any deliberation of the Board in respect of the matter; or
- (b) take part in any decision of the Board in respect of the matter.

(3) For the purpose of making a determination under subclause (2), the member to whom the determination is to relate must not –

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in making the determination.

(4) Subclause (1) does not apply –

- (a) in respect of a contract for goods or services supplied by the Board if those goods or services are ordinarily supplied by the Board and are supplied on the same terms as they are ordinarily supplied to other persons in the same situation; or
- (b) in respect of an interest that arises only because the member is also a State Service officer or State Service employee.

## **8. General procedure**

Except as provided by this Act, the Board may regulate its own proceedings.

## **9. Presumptions**

In any proceeding by or against the Board, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Board; or
- (b) the presence of a quorum at any meeting of the Board.

## **SCHEDULE 3 – TRANSITIONAL PROVISIONS**

Section 36

### **1. Members**

The appointments of those persons who, immediately before the commencement day, were members of the former Board are terminated but those persons are, if qualified, eligible to be nominated and appointed as members of the Board under this Act.

### **2. Employees**

Those persons (if any) who, immediately before the commencement day, were appointed or employed for the purposes of the former Act pursuant to section 4A of that Act are taken to be persons appointed or employed, on the same terms, for the purposes of this Act pursuant to section 25.

### **3. References to former Board**

On and after the commencement day, a reference to the former Board in any will, bequest or other document is taken, where appropriate, to include a reference to the Board.

### **4. Acts, &c., done by former Board**

To avoid doubt, all acts, matters and things done or omitted to be done by, or done or suffered in respect of, the former Board before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or been done or suffered in respect of, the Board.

### **5. Assets and liabilities**

(1) To avoid doubt, the property of the Board is –

(a) such part of the property referred to in section 5 of the former Act as remained vested in the trustees of the former Board immediately before the commencement day; and

(b) such other property as was vested in the trustees of the former Board immediately before the commencement day.

(2) To avoid doubt, any liabilities that the former Board had before the commencement

day remain liabilities of the Board.

## **6. Accounts**

To avoid doubt, any account maintained by the former Board under the former Act immediately before the commencement day is, on that day, taken to be an account maintained by the Board and any funds in that account are funds of the Board.

## **7. Proceedings, &c.**

(1) To avoid doubt –

- (a) any legal or other proceedings instituted by or against the former Board and still pending immediately before the commencement day may be continued by or against the Board; and
- (b) any judgement or order of a court obtained before the commencement day by or against the former Board may be enforced by or against the Board; and
- (c) any document relating to legal or other proceedings that was served by or on the former Board before the commencement day is taken, where appropriate, to have been served by or on the Board; and
- (d) any contract made or entered into by the former Board but not performed or discharged by the commencement day is taken to have been made or entered into by the Board; and
- (e) any non-contractual arrangement or undertaking made or given by the former Board but not discharged, satisfied, honoured or otherwise terminated by the commencement day is taken to have been made or given by the Board.

(2) To avoid doubt, the Deed dated 10 January 2008 entered into by the Royal Society of Tasmania and the Trustees of the Tasmanian Museum continues in force according to its terms.

## **8. Dormant by-laws, rules and orders**

Any by-laws, rules or orders made under or referred to in section 6 of the former Act that may still have been actually, nominally or purportedly in place immediately before the commencement day are rescinded and of no further effect.

## **9. Unclaimed material**

To avoid doubt, section 15 applies to unclaimed material that was in the Board's possession immediately before the commencement day.

## **10. Initial strategic plan**

(1) For its initial strategic plan under this Act, the Board, subject to the approval of the Minister, may adopt any long-term plan that the former Board had in place for TMAG immediately before the commencement day (*subsisting plan*).

(2) If the Minister approves the adoption of the subsisting plan, it takes effect and continues in operation according to its terms as the Board's initial strategic plan under this Act and it is taken to have been prepared and approved in all respects in accordance with section 21.

(3) Once the subsisting plan has been adopted by the Board under this clause –

(a) subsections (12), (13) and (14) of section 21 have the same application to the subsisting plan as they have to a strategic plan prepared after the commencement day; and

(b) notwithstanding section 21(1), the Board may prepare a fresh strategic plan under this Act at any time during the currency of the subsisting plan.

**SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS**

Section 37

***Aboriginal Heritage Act 1975***

1. Section 4 is amended as follows:

- (a) by omitting from subsection (1) “*Tasmanian Museum Act 1950*” and substituting “*Tasmanian Museum and Art Gallery Act 2017*”;
- (b) by omitting from subsection (4) “trustees or officers” and substituting “members of the Board of Trustees, or the Director,”.

***Duties Act 2001***

1. Section 53(f) is amended by omitting “trustees” and substituting “Board of Trustees”.

***Local Government Act 1993***

1. Section 333(2) is amended by omitting “*Tasmanian Museum Act 1950*” and substituting “*Tasmanian Museum and Art Gallery Act 2017*”.

***Meteorites Act 1973***

1. Section 2 is amended by omitting “Trustees of the Tasmanian Museum constituted by section four of the *Tasmanian Museum Act 1950*” from the definition of *the Trustees* and substituting “Board of Trustees of the Tasmanian Museum and Art Gallery under the *Tasmanian Museum and Art Gallery Act 2017*”.

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**SCHEDULE 5 – LEGISLATION REPEALED**

Section 38

*Tasmanian Museum Act 1950 (No. 55 of 1950)*