



ANALYSIS

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1994, No. 19

An Act—

- (a) To constitute the Arts Council of New Zealand Toi Aotearoa; and
- (b) To constitute the Arts Board and Te Waka Toi; and
- (c) To dissolve the Queen Elizabeth the Second Arts Council of New Zealand, Regional Arts Councils, and the Council for Maori and South Pacific Arts; and
- (d) To repeal the Queen Elizabeth the Second Arts Council of New Zealand Act 1974 [29 June 1994

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Arts Council of New Zealand Toi Aotearoa Act 1994.

(2) This Act shall come into force on the 1st day of July 1994.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Arts” includes all forms of creative and interpretative expression:

“Arts Board” means the general arts board constituted under section 13 of this Act:

“Arts boards” or “boards” means the Arts Board and Te Waka Toi:

“Arts Council” or “Council” means the Arts Council of New Zealand Toi Aotearoa constituted under section 6 of this Act:

“Community arts” means projects undertaken within a local community—

(a) That may represent either a specific geographical area or defined communities of interest; and

(b) That allow for access and participation by the wider community,—
and includes recreational arts:

“Community arts council” means any council established under section 22 of this Act, or deemed to be so established under section 26 of this Act:

“Community arts provider” means any body that is designated under section 20 of this Act:

“Minister” means the Minister of Cultural Affairs:

“Professional arts” means projects that provide significant income for those undertaking the projects:

“Projects” includes productions, individual art works, programmes involving individuals, companies or organisations, workshops and educational programmes, and other kinds of arts activities:

“Te Waka Toi” means the Maori arts board constituted under section 13 of this Act.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Purpose of Act—The purpose of this Act is—

- (a) To establish a national body for the arts, named the Arts Council of New Zealand Toi Aotearoa; and
- (b) To establish 2 arts boards, one being a Maori arts board named Te Waka Toi, and the other being a general arts board named the Arts Board; and
- (c) To provide for the designation of community arts providers—

to encourage, promote, and support the arts in New Zealand for the benefit of all New Zealanders.

5. Principles—In achieving the purpose of this Act, all persons exercising functions or powers under it—

- (a) Shall recognise the cultural diversity of the people of New Zealand; and
- (b) Shall recognise in the arts the role of Maori as tangata whenua; and
- (c) Shall recognise the arts of the Pacific Islands' peoples of New Zealand; and
- (d) Shall recognise and uphold the following principles:
 - (i) Participation, by supporting initiatives which encourage participation in the arts:
 - (ii) Access, by supporting the availability of projects of merit to communities or sections of the population that would otherwise not have access to them:
 - (iii) Excellence and innovation, by supporting activities of artistic and cultural significance which develop the creative potential of artists and art forms:
 - (iv) Professionalism, by maintaining and developing a professional arts infrastructure, both at national and community levels:
 - (v) Advocacy, by promoting New Zealand's arts and artists locally, nationally, and internationally.

PART I

ARTS COUNCIL OF NEW ZEALAND TOI AOTEAROA

6. Arts Council of New Zealand Toi Aotearoa—

(1) There is hereby constituted a national body for the arts to be called the Arts Council of New Zealand Toi Aotearoa.

(2) The Arts Council shall be a body corporate with perpetual succession and a common seal, and, subject to this Act and to any other Act or rule of law, shall have and may exercise all the rights, powers, and privileges, and may incur all the liabilities and obligations, of a natural person of full age and capacity.

(3) The Arts Council shall be accountable to the Minister for the discharge of its statutory functions.

Cf. 1992, No. 19, s. 6 (2)

7. Functions—(1) The principal functions of the Arts Council are—

- (a) To encourage, promote, and support the arts in New Zealand for the benefit of all New Zealanders:
- (b) To recognise in the arts the role of Maori as *tangata whenua*:
- (c) To promote the development of a New Zealand identity in the arts:
- (d) To encourage, promote, and support the arts of the Pacific Islands' peoples of New Zealand and the arts of the diverse cultures of New Zealand:
- (e) To determine the level of funding that should be available for allocation by each arts board:
- (f) To deliver funding in accordance with the allocation decisions of the arts boards:
- (g) To formulate policies for the direction of the arts boards:
- (h) To ensure that the arts boards encourage, promote, and support professional and community arts:
- (i) To uphold and promote the rights of artists and the right of persons to freedom in the practice of the arts:
- (j) To maintain relationships with other agencies and organisations:
- (k) To give advice to the Minister on any matter relating to or affecting the functions of the Council.

(2) In performing its functions, the Arts Council shall have regard to the principles of this Act.

8. Powers—(1) The Council shall have all such powers as are reasonably necessary or expedient to enable it to perform its functions.

(2) Without limiting the generality of subsection (1) of this section, the Council shall have power—

- (a) To take such measures as it considers necessary to ensure that adequate funds are available for the performance of its functions:
- (b) To receive any money paid to the Council by the Crown or by any other person or agency:
- (c) To deliver funding in accordance with decisions made by the arts boards:

- (d) To make extraordinary grants, awards, or loans of money:
- (e) To enter into agreements with legally constituted bodies for the administration of grants:
- (f) To make advances with or without security, at such rates of interest as it determines or free of interest:
- (g) To guarantee, with or without security, advances made by any person to any other person or persons:
- (h) To establish any endowments or create any trusts on such terms and conditions, and for such objects within the purposes of this Act, as the Council thinks fit, and appoint trustees in respect of any such endowments or trusts:
- (i) To accept gifts, devises, and bequests made to the Council, whether on trust or otherwise, and to act as trustees of money or other property vested in the Council upon trust:
- (j) To acquire, hold, lease, dispose of, or occupy any land, buildings, or real or personal property as the Council sees fit:
- (k) To establish such reserves as the Council thinks appropriate.

(3) The Council shall establish regional offices to enable it to perform its functions.

(4) The Council may perform its functions and exercise its powers outside New Zealand for the benefit of New Zealand and New Zealanders.

(5) Any trustees appointed in respect of a trust established under subsection (2) (h) of this section shall keep accounts in such manner as will enable the Council to fulfil its obligations under section 41 of the Public Finance Act 1989.

9. Membership—(1) The Council shall consist of 7 persons appointed by the Minister.

(2) One member of the Council shall be appointed as Chairperson by the Minister.

(3) In making appointments, the Minister shall have regard to—

- (a) The recognition of Maori as tangata whenua; and
- (b) The need for members of the Council to have between them a blend of knowledge of professional and community arts, management, financial and special skills, and knowledge appropriate to the functions of

the Council, culturally diverse backgrounds, and rural and urban backgrounds.

(4) All Maori members of the Council shall be appointed after consultation with the Minister of Maori Affairs.

(5) The Council shall from time to time publicly invite, in such manner as it determines, nominations of persons who wish to be appointed as members of the Council or either of the 2 boards or the South Pacific Arts Committee or for peer assessment purposes, and the Council shall at all times maintain a list of the names of the persons wishing to be so appointed which shall be open to public inspection at the Council's offices during normal office hours.

10. Council to prepare strategic plan—(1) The Council shall, after public consultation, prepare and publish a 3-year strategic plan.

(2) The strategic plan shall outline—

(a) The significant policies and objectives of the Council:

(b) The policies formulated for the direction of the arts boards:

(c) The nature and scope of the significant activities, accountability mechanisms, and consultation procedures to be undertaken or implemented:

(d) An explanation of any significant differences between the policies, objectives, and activities specified in the strategic plan and those specified in the previous strategic plan.

(3) The strategic plan shall be prepared as soon as practicable after the beginning of every third financial year.

11. Annual report—(1) The Council shall, as soon as practicable after the end of each financial year, furnish to the Minister a report on its operations for that financial year.

(2) The Minister shall lay a copy of the report before the House of Representatives in accordance with section 44A of the Public Finance Act 1989.

12. Further provisions applying to Council—The provisions set out in the First Schedule to this Act shall apply in respect of the Council.

PART II

ARTS BOARDS

13. Arts boards—There are hereby constituted 2 arts boards, of which one is to be called the Arts Board and the other is to be called Te Waka Toi.

14. Functions—(1) The principal functions of the arts boards are—

- (a) To encourage, promote, and support the arts in New Zealand for the benefit of all New Zealanders:
- (b) To recognise in the arts the role of Maori as tangata whenua:
- (c) To promote the development of a New Zealand identity in the arts:
- (d) In the case of the Arts Board, to allocate funding for the arts, including—
 - (i) Those of the Pacific Islands' peoples of New Zealand through a South Pacific Arts Committee; and
 - (ii) Those of the diverse cultures of New Zealand:
- (e) In the case of Te Waka Toi, to allocate funding for Maori arts,—

and, for those purposes,—

- (f) To allocate available funding to arts projects for professional and community arts:
- (g) To establish peer assessment mechanisms and guidelines for the allocation of funding:
- (h) To set guidelines relating to designated community arts providers, including, without limiting the generality of the foregoing, guidelines relating to their establishment, membership, functions, operation, and accountability:
 - (i) To ratify and monitor funding decisions.

(2) The arts boards shall also—

- (a) Make such inquiries, and provide the Council with such reports, in connection with any matter referred by the Council, as the Council directs:
- (b) Perform such functions as may be delegated under clause 8 of the First Schedule to this Act:
- (c) Keep the Arts Council fully informed of all activities in their area of responsibility:
- (d) Co-operate fully with and assist the Arts Council and each other in the carrying out of their functions.

15. Performance of functions—In performing their functions, the arts boards shall—

- (a) Have regard to the principles of this Act; and
- (b) Comply with any directions of the Arts Council made under section 18 of this Act.

16. Powers of arts boards—The arts boards shall have all such powers as are reasonably necessary or expedient to enable them to perform their functions.

17. Membership—(1) Each board shall consist of 7 members appointed by the Minister.

(2) Each board shall include no more than one member of the Council, who may not be a member of both boards. The Chairperson of the Council may not be a member of either board.

(3) One member of each board shall be appointed as Chairperson by the Minister. The Chairperson shall not also be a member of the Arts Council.

(4) In making appointments, the Minister shall have regard to the need for members of each board to have between them a blend of knowledge of professional and community arts, management, financial and special skills, and knowledge, culturally diverse backgrounds, and rural and urban backgrounds appropriate to the functions of the board.

(5) All members of Te Waka Toi shall be appointed after consultation with the Minister of Maori Affairs.

18. Power of Arts Council to give directions to arts boards—(1) The Council may give written directions to an arts board with respect to the exercise of its powers or the performance of its functions, including,—

- (a) Directions requiring a board to act, or refrain from acting, as specified in the direction with respect to a particular matter specified in the direction; and
- (b) Directions prescribing the procedure to be followed by an arts board in any particular matter or class of matters.

(2) An arts board shall comply with any direction so given to it.

19. Further provisions applying to arts boards—The provisions set out in the First Schedule to this Act shall apply in respect of each arts board.

PART III

COMMUNITY ARTS PROVIDERS

20. Arts boards may designate community arts providers—(1) Any body involved in community arts, including any local authority, may apply in writing to an arts board to be designated as a community arts provider.

(2) An arts board may designate any such body as a community arts provider if satisfied—

- (a) That the body complies with such guidelines as may be set by the arts board in relation to designated community arts providers; and
- (b) That the body represents, in relation to the arts, either a specific geographical area or a defined community of interest.

(3) Each arts board shall maintain a formal register of designated community arts providers.

(4) An arts board may, if satisfied that any designated community arts provider has not complied with, or is not performing according to, the guidelines set by the arts board, revoke the designation of any community arts provider after giving the community arts provider not less than 60 days' written notice of its intention to do so.

21. Allocation of funding via designated community arts providers—(1) Each arts board may allocate available funding to designated community arts providers.

(2) Each designated community arts provider shall allocate that funding to community arts projects in accordance with such guidelines as may be set by the arts board and having regard to the principles of this Act.

22. Arts boards may establish community arts councils—(1) An arts board may establish a community arts council in relation to any specific geographical area.

(2) Subject to the other provisions of this Act and to any guidelines set and rules made by the arts board, every community arts council may regulate its own procedure.

(3) A community arts council may apply in writing to an arts board to be designated as a community arts provider.

(4) An arts board may, if satisfied that any community arts council has not complied with, or is not performing according to, the guidelines set by the arts board, disestablish any community arts council after giving the council not less than 60 days' written notice of its intention to do so.

23. Funds to revert to Arts Council—Where—

- (a) The designation of any community arts provider is revoked under section 20 (4) of this Act; or
- (b) Any community arts council is disestablished under section 22 (4) of this Act,—

all funds of the Arts Council that have been allocated to the community arts provider or community arts council and that have not been allocated to community arts projects shall be repaid to the Arts Council.

24. Administrative local authorities—(1) An arts board may designate as the administrative local authority in respect of each community arts council, for the purposes of this Act, a local authority whose boundaries lie wholly or partly within the area in which that council carries on its activities.

(2) A local authority shall not be designated as an administrative local authority under this section unless it has consented in writing to the designation.

(3) Any consent under subsection (2) of this section may be given on such terms and conditions as to the appointment of a local authority representative as a member of the council or otherwise, as the local authority thinks appropriate.

(4) The administrative local authority in respect of a community arts council shall provide reasonable administrative and secretarial services for that council.

(5) Notwithstanding subsection (1) of this section, an administrative local authority may, instead of providing the services specified in that subsection for the council, make a reasonable grant to the council to enable the council itself to provide for such services.

(6) The administrative local authority may appoint representatives of any community arts council to attend and participate in any local authority meeting considering funding of the arts, and may consult any community arts council on any proposed local authority policies, facilities, or activities relating to the arts.

(7) An arts board may from time to time revoke the designation of any administrative local authority in respect of a community arts council after giving the administrative local authority and the community arts council not less than 60 days' written notice of its intention to do so.

(8) An arts board shall revoke the designation of any administrative local authority in respect of a community arts council if requested to do so in writing by the administrative

local authority, effective at the expiry of 3 months after the date of the administrative local authority's request.

(9) In this section, "local authority" means a territorial authority within the meaning of the Local Government Act 1974.

Cf. 1974, No. 67, ss. 36, 37

PART IV

MISCELLANEOUS PROVISIONS

25. Dissolution of Queen Elizabeth the Second Arts Council of New Zealand and other bodies—(1) The following bodies are hereby dissolved:

- (a) The Queen Elizabeth the Second Arts Council of New Zealand referred to in section 3 of the Queen Elizabeth the Second Arts Council of New Zealand Act 1974:
- (b) The Council for Maori and South Pacific Arts established under section 25A of that Act:
- (c) Every Regional Arts Council established under section 27 of that Act.

(2) No member of any Council referred to in this section shall be entitled to compensation for loss of office resulting from the dissolution of that Council or the enactment of this Act.

26. Transitional provision applying to community arts councils—Every body that as at the commencement of this Act is designated under section 32 of the Queen Elizabeth the Second Arts Council of New Zealand Act 1974 as a Community Arts Council shall be deemed to be a community arts council established under section 22 of this Act.

27. Assets and liabilities—On the commencement of this Act all assets and liabilities of the Queen Elizabeth the Second Arts Council of New Zealand shall become assets and liabilities of the Arts Council.

28. Vesting of assets—(1) On the commencement of this Act all real and personal property vested in the Queen Elizabeth the Second Arts Council of New Zealand shall vest in the Arts Council subject to all liabilities, charges, obligations, or trusts affecting that property.

(2) All money payable to the Queen Elizabeth the Second Arts Council of New Zealand shall become payable to the Arts Council.

29. Final accounts—(1) As soon as practicable after the commencement of this Act, the Arts Council shall cause to be prepared final accounts of the Queen Elizabeth the Second Arts Council of New Zealand.

(2) A copy of the final accounts, together with a copy of the report of the Audit Office on those accounts, shall be sent by the Arts Council to the Minister.

(3) A copy of the final accounts, together with a copy of the report of the Audit Office on those accounts, shall be laid before the House of Representatives by the Minister as soon as practicable after their receipt by that Minister.

30. Transitional provisions relating to employees—

(1) Notwithstanding any other provision of this Act or any provision of the State Sector Act 1988,—

(a) On the commencement of this Act, every person who was, immediately before the commencement of this Act, employed by the Queen Elizabeth the Second Arts Council of New Zealand shall become a person employed by the Council; and

(b) The terms and conditions of employment of every person who, by virtue of paragraph (a) of this subsection, becomes a person employed by the Council shall, until varied or until a new contract of employment is entered into, be based on the employment contract that applied to that person immediately before the commencement of this Act in respect of that person's employment with the Queen Elizabeth the Second Arts Council of New Zealand.

(2) For the purposes of every enactment, law, award, determination, contract, and agreement at any time relating to the employment of a person who, by virtue of paragraph (a) of subsection (1) of this section, becomes a person employed by the Council,—

(a) The contract of employment that applied immediately before the commencement of this Act in respect of that person's employment with the Queen Elizabeth the Second Arts Council of New Zealand shall be deemed not to have been broken by that person having so become a person employed by the Council; and

(b) Any period recognised by the Queen Elizabeth the Second Arts Council of New Zealand as continuous service with the Queen Elizabeth the Second Arts Council of

New Zealand shall be deemed to have been a period of continuous service with the Council.

(3) No person who, by virtue of paragraph (a) of subsection (1) of this section, becomes a person employed by the Council shall be entitled to any payment, benefit, or compensation by reason only of that person having ceased to be a person employed by the Queen Elizabeth the Second Arts Council of New Zealand.

Cf. 1992, No. 19, s. 30

31. New Zealand Authors' Fund—There shall be a fund to be called the New Zealand Authors' Fund to compensate New Zealand authors for the loss of royalty income incurred as a result of their books being made available through New Zealand libraries, to be administered by the Arts Council.

32. Protection of names—(1) No body shall be incorporated or registered under any other enactment, or in any other manner, under any of the following names:

- (a) "Arts Council of New Zealand Toi Aotearoa":
- (b) "Arts Board":
- (c) "Queen Elizabeth II Arts Council":
- (d) "Te Waka Toi".

(2) No body other than a community arts council within the meaning of this Act shall be incorporated or registered under any other enactment, or in any other manner, under the name "community arts council".

33. References to Queen Elizabeth the Second Arts Council of New Zealand in enactments and documents—Every reference in any enactment or document to the Queen Elizabeth the Second Arts Council of New Zealand shall be deemed to be a reference to the Arts Council constituted under this Act.

34. Consequential amendments—(1) The enactments specified in the Second Schedule to this Act are hereby consequentially amended in the manner indicated in that Schedule.

(2) The Public Bodies Contracts Act 1959 is hereby amended by omitting from Part II of the First Schedule the item relating to the Queen Elizabeth the Second Arts Council of New Zealand, and inserting, in its appropriate alphabetical order, the following item:

“The Arts Council of New
Zealand Toi Aotearoa

1994, No. 19—The Arts Council of
New Zealand Toi Aotearoa Act
1994.”

(3) The Local Authorities (Members’ Interests) Act 1968 is hereby amended by omitting from Part II of the First Schedule the item relating to the Queen Elizabeth the Second Arts Council of New Zealand, and inserting, in its appropriate alphabetical order, the following item:

“The Arts Council of New
Zealand Toi Aotearoa

1994, No. 19—The Arts Council of
New Zealand Toi Aotearoa Act
1994.”

35. Repeals—The enactments specified in the Third Schedule to this Act are hereby repealed.

SCHEDULES

Sections 12, 19

FIRST SCHEDULE

PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS

1. Term of office—(1) Every member of the Council or a board shall be appointed for a term not exceeding 3 years.

(2) Every member of the Council or a board shall be eligible for reappointment from time to time.

(3) Where the term for which a member of the Council or a board has been appointed expires, that member, unless sooner vacating or removed from office under clause 2 of this Schedule, shall continue to hold office, by virtue of the appointment for the term that has expired, until—

(a) That member is reappointed; or

(b) A successor to that member is appointed; or

(c) That member is informed in writing by the Minister that that member is not to be reappointed and that a successor to that member is not to be appointed.

2. Extraordinary vacancies—(1) Any member of the Council or a board may at any time be removed from office by the Minister for disability affecting performance of duty, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) Any member of the Council or a board may at any time resign his or her office by giving written notice to that effect to the Minister.

(3) The Chairperson or any appointed member shall be deemed to have vacated his or her office with the Council or a board if he or she is absent from 3 consecutive meetings of that body without its leave.

(4) If the Chairperson or any appointed member dies or resigns, or is removed from office, or is deemed to have vacated his or her office, the vacancy thereby occurring shall be deemed to be an extraordinary vacancy.

(5) The powers of the Council or a board shall not be affected by any vacancy in its membership.

(6) Every person who is appointed to fill an extraordinary vacancy shall be appointed for the remainder of the term for which his or her predecessor was appointed.

3. Deputy Chairperson—(1) The Council and each board may from time to time appoint one of its members as Deputy Chairperson.

(2) Unless the Deputy Chairperson sooner resigns from that office, or is appointed to be the Chairperson of the body, or vacates his or her office as a member of the body, he or she shall hold the office of Deputy Chairperson until the appointment of a successor in accordance with this clause, and shall be eligible for reappointment.

(3) If the Deputy Chairperson is appointed to be the Chairperson of the body, or ceases to be a member of the body, he or she shall thereupon vacate the office of Deputy Chairperson.

(4) During any vacancy in the office of Chairperson, or in the absence of the Chairperson from New Zealand, or while the Chairperson is incapacitated by sickness or otherwise, the Deputy Chairperson shall have and may exercise all the powers and functions of the Chairperson.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS—*continued*

(5) No acts done by the Deputy Chairperson acting as the Chairperson shall in any proceedings be questioned on the grounds that the occasion for the Deputy Chairperson so acting had not arisen or had ceased.

4. Fees and allowances of members of Council, boards, and committees—(1) There may be paid out of money appropriated by Parliament for the purpose to the members of the Council and each board and the members of any committee appointed under this Act remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(2) Nothing in subclause (1) of this clause shall apply to any member of a community arts council or other designated community arts provider.

5. Meetings—(1) Meetings of the Council and boards shall be held at such times and places as each body or its Chairperson from time to time appoints, but the Council and boards shall meet at least once in each financial year.

(2) The Chairperson, or any 2 members, may at any time call a special meeting in accordance with subclause (3) of this clause.

(3) Not less than 7 days' notice of any special meeting, and of the business to be transacted at that meeting, shall be given to each member for the time being in New Zealand, and no business other than that specified in the notice shall be transacted at that meeting.

(4) At any meeting of the Council or a board the quorum necessary for the transaction of business shall be 5 members.

(5) At all meetings of the Council or boards the Chairperson shall preside if he or she is present. If the Chairperson and the Deputy Chairperson are absent, the members present shall appoint one of their number to be chairperson of that meeting.

(6) All questions arising at any meeting of the Council or boards shall be decided by a majority of the valid votes recorded thereon.

(7) At any meeting of the Council or boards, the Chairperson or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(8) A resolution signed, or assented to by letter, facsimile transmission, telex, or other method of communication, by not less than 5 members shall have the same effect as a resolution duly passed at a meeting of the Council or board.

(9) Subject to the provisions of this Act, and of any rules made under clause 6 of this Schedule, each body may regulate its own procedure.

6. Rules—(1) The Council may from time to time, by resolution, make, alter, or rescind any rules not inconsistent with this Act, for all or any of the following purposes:

(a) Prescribing the procedure to be followed at any meeting of the Council or committee of the Council:

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS—*continued*

(b) Providing for the custody of its property and the use of its common seal:

(c) Prescribing the duties of its officers and other employees:

(d) Such other purposes as may be deemed necessary or expedient for duly carrying out the work of the Council or of any committee thereof.

(2) A board may from time to time, by resolution, make, alter, or rescind any rules not inconsistent with this Act for all or any of the following purposes:

(a) Prescribing the procedure to be followed at any meeting of the board or committee of the board or community arts council:

(b) Such other purposes as may be deemed necessary or expedient for duly carrying out the work of the board or of any committee thereof or of any community arts council.

7. Committees—(1) The Council or a board may from time to time, by resolution, appoint, alter, discharge, continue, or reconstitute any committee to advise the Council or a board on such matters relating to the Council's or a board's functions and powers as may be delegated to the committee under clause 8 of this Schedule.

(2) Every committee shall consist of such number of persons as the Council or the board thinks fit to enable the committee to carry out such functions and powers as may be delegated to the committee under clause 8 of this Schedule.

(3) Any person may be appointed to be a member of a committee, whether or not that person is a member of the Council or a board.

(4) Subject to this Act, to any rules made by the Council or a board, and to any direction given by the Council or a board, every committee may regulate its own procedure.

8. Delegation of functions and powers—(1) Subject to subclause (3) of this clause, the Council may from time to time, either generally or specifically, delegate any of its functions and powers to an arts board.

(2) Subject to subclause (3) of this clause, the Council or a board may from time to time, either generally or specifically, delegate any of its functions and powers to any of its committees or members or to any employee or employees of the Council, whether by name or as the holder or holders for the time being of any specified office or offices.

(3) The Council shall not delegate the following powers:

(a) The power of delegation conferred by subclause (1) or subclause (2) of this clause:

(b) The power to determine the level of funding that should be available for allocation by each arts board:

(c) The power to borrow money conferred by clause 20 of this Schedule:

(d) The power to make, alter, or rescind rules conferred by clause 6 of this Schedule.

(4) Every delegation under this clause shall be in writing.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS—*continued*

(5) The Council or board exercising the power of delegation shall ensure that a copy of every delegation under this clause is kept at its office and is made available for inspection by any person.

(6) Any delegation under this section may be made to—

(a) A specified person; or

(b) A person belonging to a specified class of persons; or

(c) The holder for the time being of a specified office or appointment; or

(d) The holder for the time being of an office or appointment of a specified class.

(7) Subject to any general or special directions given or conditions imposed by the Council or board, the committee or person to whom any such delegation is made may exercise or perform the delegated functions or powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(8) Every committee or person purporting to act pursuant to any delegation under this clause shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(9) Where the Council or board, or any delegate of the Council or board, uses a written document to inform any other person of action taken by the delegate, that document shall—

(a) State that the action was taken by a delegate of the Council or the board, as the case may be; and

(b) Give the delegate's name and office, or the name of the committee that acted pursuant to the delegation, as the case may be; and

(c) State that a copy of the instrument of delegation is available for inspection at the Council's or board's office, as the case may be.

(10) Every delegation under this clause shall be revocable at will, but any such revocation shall not take effect until it is communicated to the delegate.

(11) Until any such delegation is revoked, it shall continue in force according to its tenor, notwithstanding any change in the membership of the Council or the board or of any committee.

(12) No delegation under this clause shall prevent the performance or exercise of any function or power by the Council or the board which made the delegation.

9. Appointment of chief executive officer—(1) The Council may from time to time appoint a chief executive officer.

(2) The conditions of employment of the chief executive officer shall be determined from time to time by the Council.

(3) The Council shall not, in determining terms and conditions under subclause (2) of this clause, agree to any conditions of employment for a chief executive officer of the Council without—

(a) Consulting the State Services Commissioner; and

(b) Having regard to all recommendations the Commissioner makes to the Council about them within a reasonable time of being consulted.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS—*continued*

10. Appointment of other employees—(1) The chief executive officer may appoint such employees, including employees on secondment from other organisations, as he or she thinks necessary for the efficient performance of the Council's functions, and, subject to subclauses (3) and (4) of this clause, may negotiate the terms and conditions of employment of such employees.

(2) Subject to the terms and conditions of employment, the chief executive officer may at any time terminate or suspend the employment of any of the Council's employees.

(3) Before entering into any collective employment contract under the Employment Contracts Act 1991, the Council shall consult with the State Services Commissioner about the conditions of employment to be included in the collective employment contract.

(4) Where there is no collective employment contract, the Council shall consult with the State Services Commissioner from time to time about the conditions of employment applying generally to the employees of the Council.

11. Personnel policy—(1) The Council shall operate a personnel policy that complies with the principle of being a good employer.

(2) For the purposes of this clause, a "good employer" is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—

- (a) Good and safe working conditions; and
- (b) An equal employment opportunities programme; and
- (c) The impartial selection of suitably qualified persons for appointment; and
- (d) Recognition of—
 - (i) The aims and aspirations of Maori; and
 - (ii) The employment requirements of Maori; and
 - (iii) The need for involvement of Maori as employees of the Council; and
- (e) Opportunities for the enhancement of the abilities of individual employees; and
- (f) Recognition of the aims and aspirations, and the cultural differences, of ethnic or minority groups; and
- (g) Recognition of the employment requirements of women; and
- (h) Recognition of the employment requirements of persons with disabilities.

12. Equal employment opportunities—(1) The Council shall—

- (a) Develop and publish in each year an equal employment opportunities programme; and
- (b) Ensure in each year that the programme for that year is complied with and reported on within the Council's annual report.

(2) For the purposes of this clause and clause 11 of this Schedule, an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies,

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS—*continued*

procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect of the employment of any persons or group of persons.

13. Choice of procedure—Where the circumstances giving rise to a personal grievance by a person employed by the Council are also such that that person would be entitled to make a complaint under the Human Rights Act 1993, that person may take one, but not both, of the following steps:

- (a) The person may invoke, in relation to those circumstances, the procedures applicable in relation to personal grievances under the Employment Contracts Act 1991 or the relevant award or agreement; or
- (b) The person may make, in relation to those circumstances, a complaint under the Human Rights Act 1993.

14. Superannuation or retiring allowances—For the purpose of providing a superannuation fund or retiring allowances for its employees, the Council may from time to time pay sums by way of subsidy or contribution into any superannuation scheme that is registered under the Superannuation Schemes Act 1989.

15. Application of certain Acts to members and employees—Subject to clause 14 of this Schedule, no person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment under clause 9 or clause 10 of this Schedule.

16. Council to be Crown entity for purposes of Public Finance Act 1989—The Council shall be a Crown entity for the purposes of the Public Finance Act 1989.

17. Funds of Council—The funds of the Council shall consist of—

- (a) All money appropriated by Parliament for the purposes of the Arts Council and paid to the Council for the purposes of the Arts Council; and
- (b) All money allocated to the Council under section 116j (1) (a) of the Gaming and Lotteries Act 1977 (as substituted by section 3 of the Gaming and Lotteries Amendment Act 1987); and
- (c) All money lawfully contributed, donated, or bequeathed to the Council or otherwise lawfully payable to it; and
- (d) All money received by the Council by way of fees, rent, or otherwise in respect of any real or personal property vested in or controlled by the Council, or in respect of the performance or exercise of any of the functions or powers of the Council; and
- (e) All money received by the Council from the sale or other disposal of any of its real or personal property; and
- (f) All accumulations of income derived from any such money.

FIRST SCHEDULE—*continued*PROVISIONS APPLYING IN RESPECT OF ARTS COUNCIL AND
ARTS BOARDS—*continued*

18. Bank accounts—(1) The Council shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Council, or by any member or employee of the Council for the purposes of the Council, shall, as soon as practicable after it has been received, be paid into such bank accounts of the Council as the Council from time to time determines.

(3) The withdrawal or payment of money from any such accounts shall be authorised in such manner as the Council thinks fit.

(4) Any bank account of the Council shall be operated only by cheque or other instrument signed by a member or an officer of the Council authorised by the Council to do so, and shall be countersigned by another member or officer of the Council authorised to do so.

19. Investment of money—Subject to the terms of any trust or endowment, any money held by or on behalf of the Council and which is not immediately required for expenditure, may be invested in accordance with section 25 of the Public Finance Act 1989.

20. Borrowing powers—(1) The Council may, from time to time, borrow money from any bank by way of overdraft.

(2) Without prejudice to subclause (1) of this clause, the Council may, with the prior written approval of the Minister of Finance, borrow money by way of mortgage, debentures, bonds, or otherwise, and may mortgage or charge any of its real or personal property, whether present or future, in such manner as it thinks fit.

21. Unauthorised expenditure—The Council may, in any financial year, expend any sum or sums not amounting in the aggregate to more than \$4,000 for purposes not authorised by this Act.

22. Audits—The annual financial statements of the Council shall be audited by the Audit Office, which shall, for that purpose, have the same powers as it has under Part II of the Public Finance Act 1977.

23. Exemption from income tax—The Council shall be exempt from the payment of income tax.

24. Protection of persons acting under authority of Act—No person who does any act in pursuance or intended pursuance of any of the functions conferred on him or her by or under this Act shall be under any civil or criminal liability in respect of the act, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he or she has acted in bad faith or without reasonable care.

SECOND SCHEDULE
ENACTMENTS AMENDED

Section 34 (1)

Enactment	Amendment
1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)	<p>By omitting from Part II of the First Schedule the item relating to the Queen Elizabeth the Second Arts Council of New Zealand.</p> <p>By inserting in Part II of the First Schedule, in their appropriate alphabetical order, the following items:</p> <p>“The Arts Council of New Zealand Toi Aotearoa.</p> <p>“The Arts Board.</p> <p>“Community arts providers designated under the Arts Council of New Zealand Toi Aotearoa Act 1994.</p> <p>“Te Waka Toi.</p> <p>“The South Pacific Arts Committee.”</p>
1977, No. 84—The Gaming and Lotteries Act 1977	<p>By repealing paragraph (a) of section 116j (1) (as enacted by section 3 of the Gaming and Lotteries Amendment Act 1987), and substituting the following paragraph:</p> <p>“(a) The Arts Council of New Zealand Toi Aotearoa constituted under the Arts Council of New Zealand Toi Aotearoa Act 1994.”.</p>
1983, No. 130—The Films Act 1983	<p>By omitting from Part II of the Schedule the item relating to the Queen Elizabeth the Second Arts Council of New Zealand.</p> <p>By inserting in Part II of the Schedule, in its appropriate alphabetical order, the following item:</p> <p>“Arts Council of New Zealand Toi Aotearoa.”</p>
1988, No. 20—The State Sector Act 1988	<p>By repealing so much of the Fifth Schedule as relates to the Queen Elizabeth the Second Arts Council of New Zealand Act 1974.</p>
1989, No. 44—The Public Finance Act 1989	<p>By repealing so much of the First Schedule as relates to the Queen Elizabeth the Second Arts Council of New Zealand Act 1974.</p> <p>By omitting from the Fourth Schedule (as added by section 41 of the Public Finance Amendment Act 1992) the item relating to the Queen Elizabeth the Second Arts Council of New Zealand.</p>

SECOND SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1989, No. 44—The Public Finance Act 1989— <i>continued</i>	<p>By inserting in the Fourth Schedule (as so added), in its appropriate alphabetical order, the following item: “Arts Council of New Zealand Toi Aotearoa.”</p> <p>By omitting from the Fifth Schedule (as added by section 41 of the Public Finance Amendment Act 1992) the item relating to the Queen Elizabeth the Second Arts Council of New Zealand.</p> <p>By inserting in the Fifth Schedule (as so added), in its appropriate alphabetical order, the following item: “Arts Council of New Zealand Toi Aotearoa.”</p>
1990, No. 126—The National Provident Fund Restructuring Act 1990	By repealing so much of the Sixth Schedule as relates to the Queen Elizabeth the Second Arts Council of New Zealand Act 1974.
1992, No. 142—The Public Finance Amendment Act 1992	By repealing so much of the Second Schedule as relates to the Queen Elizabeth the Second Arts Council of New Zealand Act 1974.

Section 35

THIRD SCHEDULE
ENACTMENTS REPEALED

- 1974, No. 67—The Queen Elizabeth the Second Arts Council of New Zealand Act 1974. (R.S. Vol. 24, p. 685.)
- 1977, No. 170—The Queen Elizabeth the Second Arts Council of New Zealand Amendment Act 1977. (R.S. Vol. 24, p. 715.)
- 1978, No. 29—The Queen Elizabeth the Second Arts Council of New Zealand Amendment Act 1978. (R.S. Vol. 24, p. 716.)
- 1983, No. 89—The Queen Elizabeth the Second Arts Council of New Zealand Amendment Act 1983. (R.S. Vol. 24, p. 718.)
- 1990, No. 13—The Queen Elizabeth the Second Arts Council of New Zealand Amendment Act 1990.

This Act is administered in the Ministry of Cultural Affairs.