

# **Arts Centre of Christchurch Trust Bill**

Private Bill

## **Explanatory note**

### **General policy statement**

The Arts Centre of Christchurch (**The Arts Centre**) is a collection of historic stone buildings on a site previously occupied by the University of Canterbury and 2 of the city's original secondary schools. The Arts Centre was the home of the University of Canterbury (previously Canterbury College and Canterbury University College) for more than a century from 1873 to 1974.

The Arts Centre represents one of the most significant clusters of heritage buildings in New Zealand and is considered to be a cultural asset of local, national, and international heritage significance. The historic stone buildings reflect the distinctive architectural style established by renowned New Zealand architect Benjamin Woolfield Mountfort. As well as representing a unique part of the architectural heritage of New Zealand, The Arts Centre reflects the rich history of local education with a strong connection to art and science. Nobel prize-winning scientist Ernest, Lord Rutherford completed his undergraduate degree at Canterbury College and carried out most of his groundbreaking research at this site.

The Arts Centre is currently held on trust for exclusively charitable objects under the terms of The Arts Centre of Christchurch Trust (the **trust**) which were first set out in its original deed of trust dated

31 December 1978. The trust was established as a charitable trust to provide a cultural centre for the people of Christchurch and elsewhere in New Zealand and for the preservation of the architectural character and integrity of the historic stone buildings on the site. The original deed of trust has been the subject of a number of amendments since 1978.

The trust is governed by The Arts Centre of Christchurch Trust Board (the **trust board**) which is incorporated under the Charitable Trusts Act 1957.

In 2010 and 2011, the Canterbury region was struck by a series of devastating earthquakes. The Arts Centre, and in particular its historic stone buildings, suffered significant damage. Twenty-two of 23 buildings at The Arts Centre were closed to the public pending a major restoration effort. Due to the damage sustained from the earthquakes an extensive 7-year \$290 million restoration programme is now underway at The Arts Centre. This represents the largest heritage restoration project currently being undertaken in the world.

This Bill reflects the local, national, and international heritage significance of The Arts Centre. It is intended to provide legal foundations for the trust board to continue to be able to respond to, and recover from, the impact of the earthquakes. It is also appropriate for the governance structure to be adapted to account for changed circumstances and also to better secure the protection of this important cultural asset into the future.

### **Specifying the trust's objects in legislation**

The Bill sets out the trust's current objects in legislation, with the consequence that they can only be changed by amendment to the legislation. The objects of the trust as set out in the legislation would also be clearly distinguished from the powers of the trust board to advance those objects.

The trust board considers that it is important to enshrine the trust's objects in legislation in this way—

- (a) because of the local, national, and international heritage significance of The Arts Centre and its historic stone buildings; and

- (b) because of the importance of the trust's objects in relation to ensuring that The Arts Centre continues as a cultural centre for the people of Christchurch and visitors to Christchurch; and
- (c) so that the heritage integrity of The Arts Centre and its historic stone buildings is preserved.

### **Changes to governance arrangements and other terms of the trust**

The Bill also sets out new governance arrangements for the trust board, and in particular provides for a skills-based trust board appointed by an appointments committee, and it consolidates and modernises other aspects of the terms of the trust. It also provides that if the trust were to be wound up, the trust property would vest in the Crown on an interim basis. The Crown would then be required to establish a new entity for objects that are the same as, or as close as possible to, the objects of the trust and transfer the trust property to the new entity.

Many of the proposed changes to the terms of the trust under the Bill, including setting out the trust's objects so that the objects are clearly distinguished from the powers conferred on the trust board to advance those objects, providing for a skills-based trust board appointed by an appointments committee and various related changes (such as providing for trustees to be remunerated), and prescribing new arrangements in relation to winding up the trust, would almost certainly require the trust board to apply to the High Court (under the Charitable Trusts Act 1957, the Trustee Act 1956, or otherwise). The trust board would need to obtain from the Court confirmation that the trust board has the power to effect such changes and approval of a scheme to effect the changes. The outcome of such proceedings would be uncertain. The proceedings would also be time-consuming and costly.

In these circumstances, the trust board considers that legislation is the most efficient, effective, and expedient way to revise the terms of the trust.

Prior to the drafting of this Bill, the trust board has undertaken wide-ranging consultation with key external stakeholders, including the University of Canterbury, the Christchurch City Council, Heritage New Zealand Pouhere Taonga, the Christchurch Civic Trust and Pa-

patipu Rūnanga of Canterbury, about the nature and effect of the proposed changes. These stakeholders are supportive in principle of the proposed changes, including the move to a skills-based trust board.

### Clause by clause analysis

The *Preamble* describes the background to the Bill.

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill comes into force 28 days after the date on which it receives the Royal assent.

## Part 1

### Preliminary provisions

*Clause 3* states the purpose of the Bill. This is to—

- (a) set out the objects of the trust and the powers of the trust board to advance those objects in an Act; and
- (b) provide for other terms of the trust relating to its governance and administration to be replaced by the constitution set out in **Schedule 2** in order to—
  - (i) update and modernise the governance arrangements of the trust board; and
  - (ii) consolidate and revise other aspects of the governance and administration of the trust; and
- (c) provide on the winding up of the trust for the disposal of the trust property to the Crown as an interim measure pending the establishment of a new entity.

*Clause 4* defines certain terms used in the Bill.

## Part 2

### Objects of trust and other matters

*Clause 5* sets out the objects of the trust, which are the current objects of the trust as set out in its trust deed (but excluding provisions of the trust deed described as objects that are in the nature of powers conferred on the trust board, rather than objects of the trust). These objects can only be changed by Parliament.

*Clause 6* provides that the constitution of the trust board is set out in **Schedule 2** and that the trust board may request that the constitution

be amended by Order in Council, provided that any amendment must not be inconsistent with the objects set out in *clause 5*.

*Clause 7* sets out the general and specific powers of the trust board to advance the trust's objects as set out in *clause 5*.

*Clause 8* provides that if the trust board considers it is impossible, impracticable, or inexpedient for the board to carry out the trust's objects as set out in *clause 5*, the trust board may, by unanimous resolution of all the trustees, determine to wind up the trust. The trust property would then vest in the Crown, as an interim measure. The Crown would then be required to provide for the establishment of a new entity for the objects set out in *clause 5*, or for charitable objects that are as close as possible to those objects, and the trust property would be transferred to the new entity.

This is a change from the current arrangements where, if the trust board in its sole and unfettered discretion decided that the objects of the trusts are incapable of fulfilment or that it is impossible or impracticable, or inexpedient to carry them out, then the trust board may apply its assets for such charitable or educational purposes as it may think fit.

*Clause 9* clarifies the relationship between this Bill and the Charitable Trusts Act 1957. Parts 3 and 4 of the Charitable Trusts Act 1957 do not apply to the trust or the trust board, but in all other respects the Charitable Trusts Act 1957 continues to apply, with all necessary modifications.

*Clause 10* sets out provisions relating to the transition from the terms of the trust set out in the trust deed to the Bill, including arrangements in relation to the implementation of the new provisions under the constitution for a skills-based trust board appointed by an appointments committee.

*Schedule 1* sets out the land holdings that comprise The Arts Centre site.

*Schedule 2* sets out the constitution of the trust board. It is a consolidation of the terms of the trust relating to the governance and administration of the trust set out in the current trust deed (which is a collection of documents) but incorporates various changes that are in-

tended to modernise the governance arrangements for the trust board. The key changes are—

- new provisions in *clauses 1 to 4* dealing with the appointment and vacation of office of board members. The trust board will consist of 7 to 9 members appointed by the trust board based on recommendations from an appointments committee. The trust board will be a skills-based board, which means that board members will be appointed who have skills and attributes that enable them to contribute to the advancement of the objects of the trust:

Certain organisations and persons will be notified when a vacancy arises on the trust board. This shall include the University of Canterbury, the Christchurch City Council, Heritage New Zealand Pouhere Taonga, the Christchurch Civic Trust, Papatipu Rūnanga of Canterbury, the Minister for Arts, Culture and Heritage, and such other local, business, and community organisations who have an interest in The Arts Centre. These organisations and the Minister may each nominate a person to be considered for that vacancy. The chief executive must also publicly advertise the vacancy. The appointments committee will compile a shortlist of applicants and nominees, and provide the shortlist and any recommendations to the trust board:

- revised provisions relating to the proceedings of the trust board in *clause 5*, including a new requirement for the board to hold an annual public meeting. The clauses dealing with the quorum and voting have also been amended:
- revised provisions dealing with the accounts of the trust board in *clause 6*:
- a new clause (*clause 7*) that provides for the appointment of the trust's chief executive and other staff:
- a simplification of the provisions dealing with the appointment of committees and delegations to committees in *clause 8*:
- revised provisions dealing with the common seal in *clause 9*:
- a new clause (*clause 10(a)*) providing that the board members will not be liable for any loss to the trust arising from any act or omission of the member or any members unless it is attributable to that member's own dishonesty or lack of good

faith, or wilful conduct by that member that is known by that member to be a breach of trust, or recklessness or gross negligence on the part of that member:

- new clauses (*clauses 10(b) and (c)*) providing that each board member may be indemnified by the trust against all actions, proceedings, claims, damages, losses, demands, costs (including legal costs), and expenses suffered by or incurred by that member in connection with the trust. However, this indemnity does not grant the board member any indemnity against the trust property in respect of liability to the extent that liability is attributable to that member's own dishonesty or lack of good faith, or wilful conduct by that member that is known by that member to be a breach of trust, or recklessness or gross negligence on the part of that member:
- a new clause (*clause 11*) providing for the remuneration of board members. The remuneration will be set in accordance with independent external criteria having regard to a member's duties and responsibilities and the services provided. There is a requirement that the amount of the remuneration must not exceed fair market value for the services provided.

There is also a new provision allowing for any board member engaged in any profession, business, or trade to be paid all usual professional, business, and trade charges for services requested by the trust board that are provided by that member or by that member's employee or partner. Any board member who is not engaged in any profession, business, or trade may be paid all usual professional, business, and trade charges for acts or services requested by the trust board that are provided by that member's employee or partner that the member could have done or provided personally.

Members will also be entitled to be reimbursed for expenses properly incurred.

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*Nicky Wagner*

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**Preamble**

- (1) The Arts Centre, in particular its collection of historic stone buildings, is a cultural asset of local, national, and international heritage significance situated in the heart of Christchurch: 5
- (2) The Arts Centre was previously occupied by 2 of the city's original secondary schools and was the home of the University of Canterbury (previously Canterbury College and Canterbury University College) for more than a century from 1873 to 1974: 10
- (3) By deed of trust dated 31 December 1978, Albert Dempster Brownlie, Malcolm Douglass, Peter Douglas Dunbar, Richard William John Harrington, Graham Monteith Miller, Noel Robert Searell, and Thomas John Taylor formed a charitable trust (The Arts Centre of Christchurch Trust) to provide for a cultural centre for the people of Christchurch and elsewhere in New Zealand on the site formerly occupied by the University of Canterbury, and for the preservation of the architectural character and integrity of the historic stone buildings presently on that site: 15  
20
- (4) Since 1978, the trust board has amended the deed of trust on a number of occasions:
- (5) The trust is governed by The Arts Centre of Christchurch Trust Board (the **trust board**), a board of trustees incorporated under the Charitable Trusts Act 1957: 25
- (6) In 2010 and 2011, the Canterbury region was struck by a series of devastating earthquakes, and the buildings at The Arts Centre suffered significant damage. A multi-million dollar restoration programme is now underway:
- (7) In light of the earthquakes and the challenges faced by the trust board in relation to the restoration programme and securing the ongoing advancement of the trust's objects, the trust board considers that it is necessary to set out the objects of the trust in an Act. The trust board considers that setting out the trust's objects in an Act, so that the trust's objects can only be amended by legislation, recognises the local, national, and international heritage significance of The Arts Centre and its historic stone buildings and the importance of the trust's objects in relation 30  
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to ensuring that The Arts Centre continues as a cultural centre for the people of Christchurch and visitors to Christchurch and that the heritage integrity of The Arts Centre and its historic stone buildings is preserved. Legislation is the only means to achieve this objective: 5

- (8) In addition, legislation is the preferred method to—
- (a) clearly distinguish the objects of the trust and the powers conferred on the trust board to advance those objects; and
  - (b) update and modernise the governance arrangements of the trust board, and consolidate and revise other aspects of the governance and administration of the trust; and 10
  - (c) provide on the winding up of the trust for the disposal of the trust property to the Crown as an interim measure pending the establishment of a new entity: 15
- (9) Changes of the nature proposed in **recital (8)** to the terms of the trust as currently set out in its trust deed would almost certainly require the trust board to apply to the High Court (under the Charitable Trusts Act 1957, the Trustee Act 1956, or otherwise) for confirmation that the trust board has the power to effect such changes under the trust deed and approval of a scheme to effect the changes. The outcome of such proceedings would be uncertain. Such proceedings would also be time-consuming and costly: 20
- (10) Accordingly, the trust board considers that legislation is the most efficient, effective, and expedient way to achieve the matters specified in **recital (8)**: 25

**The Parliament of New Zealand therefore enacts as follows:**

**1 Title**

This Act is the Arts Centre of Christchurch Trust Act **2014**. 30

**2 Commencement**

This Act comes into force 28 days after the date on which it receives the Royal assent.

## Part 1 Preliminary provisions

### 3 Purpose

The purpose of this Act is to—

- (a) set out the objects of the trust and the powers of the trust board to advance those objects in an Act; and 5
- (b) provide for other terms of the trust relating to its governance and administration to be replaced by the constitution set out in **Schedule 2** in order to—
  - (i) update and modernise the governance arrangements of the trust board; and 10
  - (ii) consolidate and revise other aspects of the governance and administration of the trust; and
- (c) provide on the winding up of the trust for the disposal of the trust property to the Crown as an interim measure pending the establishment of a new entity. 15

### 4 Interpretation

In this Act, unless the context otherwise requires,—

**appointments committee** means the committee appointed by the trust board in accordance with **clause 4** of the constitution 20

**commencement date** means the date described in **section 2**

**constitution** means the constitution setting out the terms of the trust relating to the governance and administration of the trust, as set out in **Schedule 2**

**implementation date** means the date that is 6 months after the commencement date 25

**The Arts Centre**—

- (a) means the site bounded by Worcester Boulevard, Rolleston Avenue, Hereford Street, and Montreal Street, all in Christchurch; and 30
- (b) includes the land described in **Schedule 1** and the historic stone buildings situated on the site

**trust** means the charitable trust established in respect of The Arts Centre, known as The Arts Centre of Christchurch Trust, previously subject to the terms set out in the trust deed and now subject to the terms set out in this Act, including the constitution 35

**trust board** or **board** means The Arts Centre of Christchurch Trust Board, a board incorporated under the Charitable Trusts Act 1957

**trust deed**—

- (a) means the deed of trust dated 31 December 1978 between Albert Dempster Brownlie, Malcolm Douglass, Peter Douglas Dunbar, Richard William John Harrington, Graham Monteith Miller, Noel Robert Searell, and Thomas John Taylor to form a charitable trust to provide for a cultural centre for the people of Christchurch and elsewhere in New Zealand on the site formerly occupied by the University of Canterbury, and for the preservation of the architectural character and integrity of the historic stone buildings presently on that site; and
- (b) includes all amendments validly made to the deed of trust since that date

**trust property** means—

- (a) The Arts Centre; and
- (b) all other real and personal property held by the trust board, being any property vested in the trust board at any time before or after the date on which this Act comes into force.

## Part 2

### Objects of trust and other matters

- 5 Objects of trust** 25
- Despite anything in the constitution, the trust board holds the trust property for the following objects:
- (a) holding and developing The Arts Centre site and buildings in trust as a unique and outstanding cultural centre for use by the people of Christchurch and its visitors: 30
  - (b) fostering, promoting, and facilitating interest and involvement in art, culture, creativity, the creative industries, and education:
  - (c) providing accommodation for the objects stated in **paragraphs (a) and (b)**: 35
  - (d) promoting, conserving, and maintaining the heritage integrity of the land and buildings of The Arts Centre and

to that end adopting, and from time to time amending or varying, a conservation plan in accordance with accepted conservation principles and in terms approved by the trust board.

- 6 Constitution of trust board** 5
- (1) The constitution of the trust board is set out in **Schedule 2**.
- (2) Subject to **subsection (3)**, at the request of the trust board, the Governor-General may, by Order in Council, amend the constitution in **Schedule 2**.
- (3) Any amendment of the constitution must not be inconsistent with the objects of the trust as set out in **section 5**. 10
- 7 Powers of trust board**
- (1) In order to advance the objects of the trust as set out in **section 5**, and to develop and maintain a sustainable and financially viable organisation with the means to advance those objects, the trust board has, in addition to the powers conferred on the trust board by law,— 15
- (a) full capacity to carry on or undertake any activity, do any act, or enter into any transaction; and
- (b) for the purposes of **paragraph (a)**, full rights, powers, and privileges. 20
- (2) Without in any way limiting the powers of the trust board under **subsection (1)**, the powers of the trust board include,—
- (a) to acquire further real and personal property whatsoever and wheresoever by way of gift, purchase, or otherwise and sell the same; and 25
- (b) to let or lease any land or buildings on such terms and conditions as the board may think fit; and
- (c) to construct, alter, pull down and re-erect, improve, maintain, and provide any buildings required for the general purposes of the board and provide those buildings with such services and other amenities as are thought desirable; and 30
- (d) to employ such staff upon such terms and conditions as the board shall think fit, including appointing a person to be the chief executive of The Arts Centre for the 35

- purpose of managing its affairs upon such remuneration and other terms as it determines; and
- (e) to borrow money whether by way of unsecured advance or by mortgage, debenture or any form of security or acknowledgement of debt whatsoever whether or not the same creates any charge upon the property of the board and otherwise upon such terms or conditions as the board may in its absolute discretion deem fit; and 5
  - (f) to accept subscriptions or donations from any person; and 10
  - (g) to do all things as may from time to time appear necessary or desirable to the board to give effect to and attain the objects of the trust as set out in **section 5**, including all things incidental or conducive to the attainment of any of those objects. 15

## **8 Dissolution and disposal of trust property**

- (1) Despite anything in this Act, including the constitution, if the trust board considers it is impossible, impracticable, or inexpedient for the trust board to carry out the objects of the trust as set out in **section 5**,— 20
  - (a) the trust board may, by unanimous resolution of all the members of the trust board, decide to wind up the trust; and
  - (b) if the trust board decides to wind up the trust under **paragraph (a)**, it must, as soon as is reasonably practicable, transfer the trust property to the Crown, provided that prior to such transfer all debts and liabilities of the trust board in relation to the trust must be met out of the trust property or arrangements made for any debts or liabilities that have not been met to be assumed by the Crown or the new entity referred to in **subsection (2)(c)** or otherwise dealt with. 25 30
- (2) If the trust board decides to wind up the trust under **subsection (1)(a)**,— 35
  - (a) the Crown must accept the transfer of the trust property from the trust board under **subsection (1)(b)**; and
  - (b) the Crown must hold the trust property for the objects set out in **section 5**, or for charitable objects that are as

- close as possible to those objects, as determined by the Crown; and
- (c) the Crown must, as soon as is reasonably practicable, following completion of the transfer of the trust property from the trust board to the Crown,— 5
- (i) provide for the establishment of a new entity to hold the trust property for the objects referred to in **paragraph (b)** and, if applicable, to assume any related debts and liabilities; and
- (ii) transfer the trust property (and, if applicable, any related debts and liabilities) to the new entity. 10
- 9 Application of Charitable Trusts Act 1957**
- (1) Subject to **subsection (2)**, the provisions of the Charitable Trusts Act 1957 continue to apply, with all necessary modifications, to the trust and to the trust board. 15
- (2) Parts 3 and 4 of the Charitable Trusts Act 1957 do not apply to the trust or to the trust board.
- 10 Transitional provisions**
- (1) On and from the commencement date, the terms of the trust set out in the trust deed are replaced by this Act, including the constitution. 20
- (2) Despite **subsection (1)**, on and from the commencement date—
- (a) the trust board constituted under the trust deed and the members of that trust board as at the commencement date are entitled to continue to act in respect of the trust in accordance with this Act, as if that trust board had been constituted and the members appointed under this Act; and 25
- (b) the chief executive of The Arts Centre appointed by the trust board under the trust deed as at the commencement date is deemed to be the first chief executive under this Act. 30
- (3) As soon as practicable after the commencement date,—
- (a) the trust board must form an appointments committee in accordance with **clause 4** of the constitution; and 35



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- (b) the chief executive and the appointments committee must act under **clause 1(c) to (i)** of the constitution in respect of all of the positions on the trust board; and
- (c) the trust board must appoint the members of the board in accordance with **clause 1(i)** of the constitution; and 5
- (d) **clause 1** of the constitution applies with all necessary modifications.
- (4) Members of the trust board on the commencement date cease to hold office at the end of the day before the implementation date. 10
- (5) The terms of office of the first members appointed under **subsection (3)(c)** begin on the implementation date.
- (6) From the implementation date, the trust board will be constituted in accordance with **clause 1** of the constitution.
- (7) Despite **clause 5(b)** of the constitution, from the implementation date until the next annual general meeting, the trust board must elect a chair and a deputy chair who hold office until the next annual general meeting. 15
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**Schedule 1****Land comprising The Arts Centre site**

1.4572 hectares being Lot 1 on Deposited Plan 435041 and being the land comprised in computer freehold register 531681

390 m<sup>2</sup> being Lot 2 on Deposited Plan 435041 and being the land 5  
comprised in computer freehold register 531682

1619 m<sup>2</sup> being Lot 3 on Deposited Plan 435041 and being the land  
comprised in computer freehold register 531683

2112 m<sup>2</sup> being Lot 4 on Deposited Plan 435041 and being the land  
comprised in computer freehold register 531684 10

677 m<sup>2</sup> being Lot 5 on Deposited Plan 435041 and being the land  
comprised in computer freehold register 531685

3195 m<sup>2</sup> being Lot 6 on Deposited Plan 435041 and being the land  
comprised in computer freehold register 531686

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## Schedule 2

### Constitution of the Arts Centre of Christchurch Trust Board

#### 1 Membership of trust board and appointments

- (a) The trust board must consist of not fewer than 7 nor more than 9 members. 5
- (b) The members of the trust board are appointed as described in this clause.
- (c) As soon as practicable after the chief executive becomes aware that a position on the trust board has become vacant, the chief executive must comply with **paragraphs (d) to (f)**. 10
- (d) The chief executive must advise, in writing,—
- (i) the University of Canterbury, that a vacancy has arisen on the trust board and that the university may nominate a person to be considered for that vacancy; and 15
- (ii) the Christchurch City Council, Heritage New Zealand Pouhere Taonga, the Christchurch Civic Trust, Papatipu Rūnanga of Canterbury, and such other local, business, and community organisations with an interest in The Arts Centre, that a vacancy has arisen on the trust board and that they are each able to nominate a person to be considered for that vacancy; and 20 25
- (iii) the Minister for Arts, Culture and Heritage, that a vacancy has arisen on the trust board and that he or she is able to nominate a person to be considered for that vacancy.
- (e) The chief executive must publicly advertise that a vacancy has arisen on the trust board and that any person may apply to be considered for that vacancy. 30
- (f) In any advice or advertisement under **paragraphs (d) and (e)** respectively, the chief executive must specify—
- (i) the date by which all nominations and applications must be received; and 35

- (ii) that all nominations and applications will be assessed by the appointments committee of the trust board.
- (g) On receiving the nominations and applications, the appointments committee must compile a shortlist of potential board members (the **shortlist**) to be provided to the board together with any recommendations. 5
- (h) The appointments committee must have regard to the following criteria when compiling a shortlist:
- (i) prior experience as a director or trustee or experience in any other governance role; and 10
- (ii) occupational skills, abilities, and experience; and
- (iii) the need for there to be diversity of community representation and a wide range of skills and expertise present among the members of the board. 15
- (i) The appointments committee may use any process it thinks fit to compile the shortlist and to make recommendations for appointment.
- (j) On receiving the shortlist and any recommendations, the trust board must determine to fill the vacancy from the shortlist and appoint a person as member of the board. 20
- (k) Where the chief executive becomes aware that more than 1 position on the trust board has become vacant at the same time,— 25
- (i) the chief executive and the trust board must deal with those vacancies together; and
- (ii) the provisions of this clause apply with any necessary modifications.
- 2 Term of appointments** 30
- (a) A person appointed as a member of the trust board holds office for the term specified in the instrument of appointment which term must not be less than 1 year and not more than 3 years.
- (b) The trust board may reappoint a person as a member of the board for a further term or terms provided that no 35

person may serve as a member of the board for more than 6 years, whether consecutively or not.

- (c) **Paragraph (b)** is subject to the exception that an extension of 1 year is permissible in exceptional circumstances. 5

### 3 Vacation of office and disqualification

- (a) The office of a member of the trust board is vacated—
- (i) if the member—
    - (A) resigns; or
    - (B) dies; or 10
    - (C) is, under **paragraph (c)**, not capable of holding office as a member of the board; or
    - (D) refuses to act; or
    - (E) is absent without leave from three consecutive ordinary meetings of the board; or 15
  - (ii) if the term of the appointment of the member expires.
- (b) Each of the following persons is not capable of being appointed or reappointed, or holding office as a member of the trust board: 20
- (i) a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term that has not yet expired, or is subject to a condition not yet fulfilled:
  - (ii) a person who has been convicted within the last 3 years of a criminal offence punishable by imprisonment: 25
  - (iii) a person to whom an order made under section 383 of the Companies Act 1993 applies:
  - (iv) a person who is subject to a property order made under section 30 or 31 of the Protection of Personal and Property Rights Act 1988. 30
- (c) If a property order is made in respect of a member of the board under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders),— 35

- (i) **paragraph (a)(iii)** does not apply to the member by virtue only of the making of that order; but
  - (ii) while the order remains in force, the member is deemed to have been granted leave of absence and is not capable of acting as a member during that period. 5
  - (d) Subject to the requirement of a quorum, no vacancy in the office of a board member vitiates or renders invalid any proceedings, resolutions, or decisions of the trust board. 10
- 4 Appointments committee**
- (a) The trust board appoints the appointments committee.
  - (b) The appointments committee comprises—
    - (i) the chair of the trust board; and
    - (ii) 3 other persons as follows: 15
      - (A) 1 person being a board member:
      - (B) 2 persons being suitably qualified independent advisers.
  - (c) **Clause 3(b)** applies with respect to any person who is a member of the appointments committee. 20
- 5 Proceedings of the trust board**
- (a) The trust board may meet at such times and places as it determines, but it must, once in each calendar year, hold an annual general meeting.
  - (b) At each annual general meeting, unless the trust board otherwise determines, the board must elect a chair and deputy chair from among its members, and each of the persons so elected holds office until his or her successor is elected. 25
  - (c) The trust board must, once in each calendar year, hold an annual public meeting, and at each annual public meeting the board must present its annual report and make a copy of its current strategic plan available to the general public. 30

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- (d) The chair presides at all meetings of the trust board at which the chair is present. In the absence of the chair from any meeting, the deputy chair presides at that meeting. In the absence of both the chair and deputy chair from any meeting, the members present must appoint one of their number to preside at that meeting. 5
- (e) A trust board meeting will only be held if a quorum is present. A quorum at a meeting of the trust board will be established only if the number of board members in attendance exceeds 50% of the total number of board members. 10
- (f) All questions before the trust board must be decided by a majority of votes of the members present at the meeting of the board and entitled to vote on those questions.
- (g) Subject to **paragraphs (a) to (f)**, the trust board governs its own procedures and may make and alter the rules as to its procedures, including fixing the periods of notice to be given for meetings of the board and committees and of resolutions to be proposed at such meetings. All such rules are binding on the members of the trust board and its officers and employees. 15 20
- (h) Unless the trust board otherwise requires, the chief executive must attend each meeting of the board and of such committees as the board directs.
- 6 Accounts** 25
- (a) The trust board must keep full and correct accounts of all money received and expended by it.
- (b) The accounts must be audited by a chartered accountant in public practice who must be appointed by the trust board for that purpose. 30
- (c) The financial year of the trust board is the period of 12 months ending on 31 December.
- (d) The trust board must, as soon as practicable after the end of its financial year, prepare a full and complete statement of its income and expenditure for that financial year, together with a balance sheet showing all the assets and liabilities of the board as at 31 December. 35

**7 Appointment of chief executive and other personnel**

- (a) The trust board must appoint a person to be the chief executive of The Arts Centre for the purpose of managing its affairs, upon such remuneration and other terms as the trust board determines. 5
- (b) The trust board may employ any other staff upon such terms and conditions that the trust board thinks fit.

**8 Power to appoint committees and delegations**

- (a) The trust board may from time to time appoint any committee. The trust board may also discharge a committee or alter a committee's membership. 10
- (b) A person may be appointed to be a member of a committee despite not being a member of the trust board.
- (c) The trust board may, by resolution, delegate any of its powers and duties to any committee or to any person. 15
- (d) Any committee or person may exercise or perform any power or duty delegated to it under this clause in the same manner as if it were the trust board.
- (e) Any committee or person purporting to act in accordance with a delegation is presumed to be doing so in the absence of proof to the contrary. 20
- (f) A delegation does not prevent the trust board from performing the delegated duty or exercising the delegated power.
- (g) A delegation is revocable at will. 25
- (h) A delegation continues in force according to its tenor until it is revoked.

**9 Common seal**

- (a) The common seal of the trust board must be kept in the custody of such officer as is appointed by the board. 30
- (b) The common seal may be used only as directed by the trust board.
- (c) The common seal may be affixed to any document only in the presence of 2 members of the trust board who must attest its affixation. 35



**10 Liability and indemnification of board members**

- (a) No board member (including any former member) acting under this Act and this constitution is liable for any loss to the trust arising from any act or omission of the member or any members unless it is attributable to that member's own dishonesty or lack of good faith, or wilful conduct by that member which is known by that member to be a breach of trust, or recklessness or gross negligence on the part of that member. 5
- (b) Each board member (including any former member) acting under this Act and this constitution is entitled to be indemnified by the trust against all actions, proceedings, claims, damages, losses, demands, costs (including legal costs), and expenses suffered by or incurred by that member in connection with the trust. 10 15
- (c) **Paragraph (b)** does not grant the board member any indemnity against the trust property in respect of liability to the extent that liability is attributable to that member's own dishonesty or lack of good faith, or wilful conduct by that member that is known by that member to be a breach of trust, or recklessness or gross negligence on the part of that member. 20

**11 Remuneration of board members**

- (a) A board member may be remunerated for services provided as a member, provided that such remuneration is reasonable and set in accordance with independent external criteria having regard to that member's duties and responsibilities and the services provided. 25
- (b) The amount of the remuneration must not exceed fair market value for the services provided. 30
- (c) Any board member who is engaged in any profession, business, or trade may be paid all usual professional, business, and trade charges for services requested by the trust board that are provided by that member or by that member's employee or partner. 35
- (d) Any board member who is not engaged in any profession, business, or trade may be paid all usual profes-

sional, business, and trade charges for acts or services requested by the trust board that are provided by that member's employee or partner that the member could have done or provided personally.

- (e) A member is entitled to be reimbursed for expenses 5 properly incurred by the member in connection with the trust, including travel and other expenses.