

South Australia

## Art Gallery Act 1939

An Act to provide for the control of the Art Gallery of South Australia, and for other purposes.

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**The Parliament of South Australia enacts as follows:**

#### **1—Short title**

This Act may be cited as the *Art Gallery Act 1939*.

### 3—Interpretation

In this Act, unless the contrary intention appears—

*art gallery* means the Art Gallery of South Australia;

*board* means The Art Gallery Board;

*to damage* includes to mutilate;

*member* means member of the board.

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

### 4—Art Gallery Board

- (1) *The Art Gallery Board* is established.
- (2) The board is a body corporate with perpetual succession and a common seal, and is, by the name of The Art Gallery Board, capable of suing and being sued, of acquiring and disposing of property, of proving and compounding debts, and of doing and suffering, subject to this Act, all such other things as bodies corporate may by law do and suffer.

### 5—Constitution of board

The board consists of nine members appointed by the Governor.

### 6—Conditions of membership

- (1) A member of the board will be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of appointment.
- (2) A member of the board is, upon the expiration of a term of office, eligible for reappointment.
- (3) The Governor may remove a member of the board from office for—
  - (a) mental or physical incapacity to carry out satisfactorily official duties; or
  - (b) neglect of duty; or
  - (c) dishonourable conduct.
- (4) The office of a member of the board becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is removed by the Governor under subsection (3).
- (5) Upon the office of a member of the board becoming vacant, a person will be appointed in accordance with this Act to the vacant office.

### 8—Notice of appointment

- (1) Every appointment of a member must be notified by the Minister in the Gazette.
- (2) The Gazette containing any such notification is *prima facie* evidence of the appointment so notified.

**9—Board may act, notwithstanding vacancy**

- (1) The board may act and may exercise all its powers notwithstanding any vacancy in its membership, and no act or proceeding of the board is invalid or illegal in consequence only of any such vacancy existing at the time of the act or proceeding.
- (2) All acts and proceedings of the board are, notwithstanding the subsequent discovery of any defect in the appointment of any member or that any member was disqualified or disentitled to be a member or to act as such, as valid as if the member had been duly appointed and was qualified and entitled to be and to act as a member of the board.

**10—Quorum**

At all meetings of the board any five members constitute a quorum.

**11—Presiding member and deputy**

- (1) The Governor may from time to time appoint one of the members to be the presiding member of the board and one member to be the deputy of the presiding member.
- (2) A member so appointed will hold that office for four years, but if any vacancy occurs in the office otherwise than by effluxion of time, the member appointed to fill the vacancy will hold office only for the unexpired portion of the term of office.
- (3) A person appointed to an office under subsection (1) may resign the office by notice in writing given to the Minister.
- (4) If at any time a person appointed to an office under subsection (1) ceases to be a member of the board that person ceases to hold that office.
- (5) In the absence from official duties of the presiding member, the deputy will exercise the powers and discharge the duties of the presiding member.

**12—Who to preside at meetings**

- (1) At all meetings of the board the presiding member or, in that person's absence, the deputy, will preside.
- (2) In the absence of both those persons from any meeting or part of a meeting, one of the other members present must be elected by those present to preside at the meeting during the absence.
- (3) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**13—Staff**

There will be—

- (a) a director of the art gallery; and
- (b) such other employees as are necessary for the administration of this Act, all of which are Public Service positions.

**16—Powers and functions of board**

- (1) The functions of the board are as follows:
  - (a) to undertake the care and control of the art gallery and of all lands and premises placed under the care and control of the board; and

- (b) to undertake the care and control of all works of art, exhibits and other personal property acquired for the purposes of the art gallery; and
  - (c) to assist in the promotion and supervision of art galleries and collections of art and any body or association established for the promotion of art within the State; and
  - (d) to advise the Minister and any organisation referred to in paragraph (c) on matters of general policy relating to art galleries and collections of art; and
  - (e) to advise the Minister, local government authorities and any other authority or body on the provision, selection and maintenance of works of art for public places in the State; and
  - (f) such other functions as may be necessary or incidental to the above functions.
- (2) The board has and may exercise such powers as are necessary for or incidental to the carrying out of its functions.
- (3) In the exercise of its powers and the performance of its functions under this Act, the board may—
- (a) receive, take or purchase any work of art, exhibit or personal property;
  - (b) sell or exchange any such work of art, exhibit or personal property or any work of art, exhibit or personal property under the care or control of the board;
  - (c) establish and maintain refreshment and eating amenities in or in connection with the art gallery;
  - (d) establish and maintain facilities for the purchase by the public of books, papers, prints, postcards, reproductions, replicas, promotional material and other articles in connection with works of art or craft and the art gallery;
  - (e) enter into any contract with any person or body of persons with respect to the performance or exercise of any part of its functions and powers under this Act.

#### **16A—Power to borrow**

- (1) The board may, with the consent of the Treasurer, for the purposes of exercising or performing its powers and functions under this Act, borrow money at interest from any person upon such security (if any) by way of mortgage or charge over any of the assets of the board as the board may think fit to grant.
- (2) The Treasurer may, upon such terms and conditions as the Treasurer thinks fit, guarantee the repayment of any money (together with interest) borrowed by the board under this section.
- (3) Any money required to be paid in satisfaction of a guarantee given pursuant to subsection (2) may be paid out of the Consolidated Account which is to the necessary extent appropriated accordingly.

#### **17—Disposal of money voted**

- (1) The board must receive and apply all money voted by Parliament for the purposes of the art gallery.

- (2) This section does not apply to money voted by Parliament for the salaries or wages of the officers and employees appointed for the purpose of carrying this Act into effect.

### **18—Power of board to lend exhibits**

- (1) The board may lend or make available to any person or body of persons, upon such terms and conditions as the board thinks fit, any works of art, exhibits or other personal property of which the board has the care or control.
- (1a) The board must observe any policy or direction made or given by the Minister in relation to the exercise of powers conferred by subsection (1).
- (2) The board may accept upon loan any works of art, exhibits or other personal property.

### **18A—Unclaimed goods etc**

- (1) Where—
- (a) any goods have come or come into the possession of the board in circumstances in which the owner of those goods might reasonably be expected not to intend to pass the property in the goods to the board; and
  - (b) a period of two years has elapsed after—
    - (i) in the case of delivery of possession of those goods to the board by or on behalf of the owner—the day on which in the terms of that delivery the board would be required to deliver up possession of the goods or the day on which those goods came into the possession of the board, whichever last occurs; or
    - (ii) in any other case—the day on which those goods came into the possession of the board,

the board may, by notice given in accordance with subsection (2), require the owner to take possession of those goods.

- (2) Notice under this section may be given—
- (a) where the owner of the goods is known to the board, by post addressed to the owner's last known address;
  - (b) in any other case, by inserting on not less than two occasions in a daily newspaper circulating throughout the State a description of the goods identifying them with reasonable particularity and requiring the owner of the goods to take possession of the goods.
- (3) If goods the subject of a notice under subsection (2) are still in the possession of the board on the expiration of 12 months after giving notice under subsection (2), the property in the goods vests in the board free of all trusts, estates, interests or charges of any description.
- (4) In this section—
- goods** includes any work of art, exhibit or personal property (whether or not of the same kind as the foregoing) of any description.

## **19—Power of board to arrange special exhibitions**

The board may, upon any special occasion, or for any special purpose, require that admission to the art gallery or any part of the art gallery be subject to such charge as is fixed by the board.

## **20—Vesting of certain property in board**

- (1) A gift or bequest made to or for the benefit or purposes of the art gallery, or the board, or the governing body of the art gallery, will be taken to be a gift or bequest to or on behalf or for the benefit or purposes of the board.
- (2) Any such gift or bequest, and any income arising out of the gift or bequest, must be applied by the board towards the purposes for which the gift or bequest was made.

## **21—Liability of persons damaging etc any chattel in board's possession**

- (1) If a person unlawfully damages, destroys or removes from the possession of the board any work of art, exhibit or chattel in the possession of the board, the person is (without limiting or affecting any other liability imposed by this Act or otherwise) liable for and must pay to the board the full amount of the value of the work of art, exhibit or chattel.
- (2) An amount payable under subsection (1) is recoverable summarily.
- (3) Any proceedings under this section may be taken by the board or by any person purporting to be authorised in writing by the board.
- (4) Where a person is convicted of an offence against this Act arising out of that damage, destruction or removal, the court of summary jurisdiction convicting the person may (in addition to imposing any penalty) order the person to pay to the board the full amount of the value of the work of art, exhibit or chattel damaged, destroyed or removed, and that amount is recoverable as if it were part of the penalty so imposed.

## **22—Reward for information of commission of offence**

- (1) The board may offer and pay a reward to any person who gives information to the board or any of its officers of the commission of an offence against this Act or of the damage, destruction or removal from the possession of the board of any work of art, exhibit or chattel in the possession of the board (whether or not the damage, destruction or removal is an offence against this Act).
- (2) Where proceedings are taken before a court in respect of any such offence, damage, destruction or removal, and a person is convicted by the court, or any order is made by the court against a person—
  - (a) the court may (in addition to imposing any penalty or pecuniary liability) order the person to pay to the board the amount of any reward paid or promised or engaged to be paid by the board in respect of the offence, damage, destruction or removal; and
  - (b) any such amount is recoverable as if it were part of the penalty or pecuniary liability imposed.
- (3) The total amount recoverable under subsection (2) must not exceed the sum of \$10 in respect of each offence, damage, destruction or removal.

## 23—Regulations

- (1) The Governor may, on the recommendation of the board, make regulations for all or any of the following purposes:
  - (a) for the conduct of the business and proceedings of the board;
  - (b) for the management of the affairs of the art gallery;
  - (c) for the admission of the public or any individual to the art gallery or any part of the art gallery or for the exclusion or expulsion of the public or any individual from the art gallery or any part of the art gallery;
  - (d) for specifying the conditions and restrictions upon and subject to which the public may be allowed to examine works of art and exhibits;
  - (e) for preventing the handling, touching, defacing, or marking of the works of art and exhibits in the possession of the board;
  - (f) for the effectual use of the works of art and exhibits for the purposes of public education and enjoyment;
  - (g) for regulating, restricting or prohibiting the driving or parking of motor vehicles on land vested in or under the control of the board;
  - (h) for prescribing fines not exceeding a division 9 fine for contravention of any regulation;
  - (ha) fixing expiation fees for alleged offences against the regulations;
  - (i) generally for carrying into effect the objects of this Act.
- (2) In any proceedings in respect of an offence against a regulation—
  - (a) an allegation in a complaint that a specified person was the owner of a specified vehicle on a specified day will be taken to be proved in the absence of proof to the contrary; and
  - (b) where it is proved that a vehicle was parked on land vested in or under the control of the board in contravention of a regulation, it will be presumed, in the absence of proof to the contrary, that the vehicle was so parked by the owner of the vehicle.

## 24—Summary offences

Offences against this Act are summary offences.

## 25—Proceedings by board

In any information or complaint laid by the board against a person who steals or injures any property belonging to or under the care or control of the board, and in any proceedings instituted in relation to any such property, it is sufficient to state generally that the property concerned is the property of the board.

## 26—Annual report and audit

- (1) The board must, on or before 30 September in each year, report its proceedings during the 12 months ending on the preceding 30 June to the Governor. A copy of the report must be laid, as soon as practicable, before both Houses of Parliament.

- (2) The accounts of the board must, at least once in each year, be audited by the Auditor-General.
- (3) An abstract of the accounts, together with the report of the Auditor-General, must be laid, as soon as practicable, before both Houses of Parliament.

### **27—Expenses under Act**

The money required for the purposes of this Act must be paid out of money provided by Parliament.

### **28—Transfer of certain property**

- (1) All personal property of the Board of Governors of the Public Library, Museum, and Art Gallery of South Australia, in the possession or control of the Board of Governors for the purpose of being used for the purposes of the art gallery is after the commencement of this Act, under the care and control of the board.
- (2) If any doubt or difficulty arises as to whether this section applies to any property, the Minister may by notice in writing give directions as to that property and any such direction is binding upon all persons, courts, and tribunals.

### **29—Transfer of certain trust property**

- (1) The Minister must by notice in writing direct that such portion of any property, real or personal, held by the said Board of Governors as, in the opinion of the Minister, is held in trust for the purposes of the art gallery is to be under the care and control of the board.
- (2) Every such notice is binding upon all persons, courts, and tribunals.
- (3) The property placed under the care and control of the board, and any income derived from the property, must be applied by the board for the purposes of the art gallery; but if any such property or income was held by the said Board of Governors pursuant to any trust deed or instrument, the property and income must be applied in accordance with the conditions of the deed or instrument.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1939	28	<i>Art Gallery Act 1939</i>	14.12.1939	1.2.1940 ( <i>Gazette 18.1.1940 p69</i> )
1960	27	<i>Art Gallery Act Amendment Act 1960</i>	27.10.1960	27.10.1960
1973	38	<i>Art Gallery Act Amendment Act 1973</i>	25.10.1973	11.7.1974 ( <i>Gazette 11.7.1974 p99</i> )
1974	69	<i>Art Gallery Act Amendment Act 1974</i>	17.10.1974	17.10.1974
1975	35	<i>Art Gallery Act Amendment Act 1975</i>	3.4.1975	13.11.1975 ( <i>Gazette 13.11.1975 p2430</i> )
1976	35	<i>Art Gallery Act Amendment Act 1976</i>	21.10.1976	21.10.1976
1978	30	<i>Art Gallery Act Amendment Act 1978</i>	6.4.1978	6.7.1978 ( <i>Gazette 6.7.1978 p5</i> )
1978	111	<i>Art Gallery Act Amendment Act (No. 2) 1978</i>	7.12.1978	7.12.1978
1979	70	<i>Art Gallery Act Amendment Act 1979</i>	22.11.1979	22.11.1979
1980	51	<i>Art Gallery Act Amendment Act 1980</i>	3.7.1980	14.8.1980 ( <i>Gazette 14.8.1980 p525</i> )
1980	101	<i>Art Gallery Act Amendment Act (No. 2) 1980</i>	18.12.1980	18.12.1980
1985	32	<i>Art Gallery Act Amendment Act 1985</i>	11.4.1985	30.5.1985 ( <i>Gazette 30.5.1985 p1801</i> )
1990	23	<i>Statute Law Revision Act 1990</i>	26.4.1990	Sch 1—29.6.1990 ( <i>Gazette 14.6.1990 p1606</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 4)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )

### Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 414.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
s 2	<i>deleted by 23/1990 s 3(1) (Sch 1)</i>	29.6.1990
s 3	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
<i>chairman</i>	<i>deleted by 23/1990 s 3(1) (Sch 1)</i>	29.6.1990
to damage	inserted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 4		
s 4(1)	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990

s 4(2)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 5	substituted by 51/1980 s 3	15.8.1980
	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 6	substituted by 32/1985 s 3	30.5.1985
	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 7	<i>deleted by 32/1985 s 3</i>	30.5.1985
s 8	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 9	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 10	amended by 51/1980 s 4	14.8.1980
	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 11	amended by 70/1979 s 2	22.11.1979
	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 12	amended by 70/1979 s 3	22.11.1979
	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 13	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 14	<i>deleted by 23/1990 s 3(1) (Sch 1)</i>	29.6.1990
s 15	<i>deleted by 101/1980 s 2</i>	18.12.1980
s 16		
s 16(1) and (2)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 16(3)	amended by 30/1978 s 3	6.7.1978
s 16A		
s 16A	inserted by 35/1976 s 2	21.10.1976
16A(2) and (3)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 17	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 18		
s 18(1)	amended by 111/1978 s 2(a)	7.12.1978
s 18(1a)	inserted by 111/1978 s 2(b)	7.12.1978
	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 18A		
s 18A(1) and (2)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 18A(3)	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 18A(4)		
goods	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 19	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 20	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 21		
s 21(1)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 21(2) and (4)	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 22		
s 22(1)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 22(2)	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 22(3)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 23		

s 23(1)	s 23 amended and redesignated as s 23(1) by 30/1978 s 4	6.7.1978
	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
	amended by 34/1996 s 4 (Sch cl 4)	3.2.1997
s 23(2)	inserted by 30/1978 s 4(c)	6.7.1978
	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 23(3)	<i>inserted by 30/1978 s 4(c)</i>	6.7.1978
	<i>amended by 23/1990 s 3(1) (Sch 1)</i>	29.6.1990
	<i>deleted by 34/1996 s 4 (Sch cl 4)</i>	3.2.1997
ss 24 and 25	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 26		
s 26(1)	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 26(2)	substituted by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 26(3)	inserted by 23/1990 s 3(1) (Sch 1)	29.6.1990
ss 27—29	amended by 23/1990 s 3(1) (Sch 1)	29.6.1990
s 30	<i>deleted by 23/1990 s 3(1) (Sch 1)</i>	29.6.1990

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996*

#### 5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

## Appendix—Divisional penalties and expiation fees

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50

**Art Gallery Act 1939—3.2.1997**

Appendix—Divisional penalties and expiation fees

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<b>Division</b>	<b>Maximum imprisonment</b>	<b>Maximum fine</b>	<b>Expiation fee</b>
12	–	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*