

Arts Council of New Zealand Toi Aotearoa Bill

Government Bill

Explanatory note

General policy statement

This Bill replaces the Arts Council of New Zealand Toi Aotearoa Act 1994 (the **1994 Act**), which established the Arts Council of New Zealand Toi Aotearoa (Creative New Zealand). Under the 1994 Act the governance of the Arts Council of New Zealand Toi Aotearoa consists of—

- a 7-member Council; and
- 2 arts boards, the Arts Board and Te Waka Toi, each with 7 members.

Members of the Council and the 2 arts boards are appointed by the Minister for Arts, Culture and Heritage. Te Waka Toi members and Māori members of the Council are appointed by the Minister in consultation with the Minister of Māori Affairs.

The 1994 Act also refers to the South Pacific Arts Committee, which is a committee of the Arts Board.

The Bill replaces this structure with a single board, the Arts Council of New Zealand Toi Aotearoa (the **Arts Council**). It will be responsible for determining strategic direction, priorities, and a policy framework for the whole organisation and for funding allocation decisions. This new structure will improve the Arts Council's efficiency and responsiveness, and ensure the best investment of resources for

the benefit of New Zealand artists, arts organisations, and all New Zealanders.

At least 4 members of the Arts Council will be appointed having regard to their knowledge of te ao Māori (Māori world view), tikanga Māori (Māori protocol and culture), and Māori arts. This will ensure Māori participation in policy making, strategy setting, and funding decisions. These 4 members will make up a committee of the Arts Council. The committee's functions will be to give advice to the Arts Council on matters relevant to the functions of the Arts Council in relation to Māori arts, and any other functions the Council delegates to the committee. The Arts Council will involve Māori in any assessment processes relevant to Māori arts.

At least 2 members of the Arts Council will be appointed after consultation with the Minister of Pacific Island Affairs. These 2 members are to be qualified by their knowledge of the arts of the Pacific Island peoples of New Zealand. This will ensure Pacific participation in policy making, strategy setting, and funding decisions. The Arts Council will involve Pacific Island people of New Zealand in any assessment processes relevant to the arts of the Pacific Island peoples of New Zealand.

The qualifications required under the Bill for all appointments are in addition to the qualifications required for appointment by the Crown Entities Act 2004.

The Bill does not continue the requirement for the Arts Council to prepare and publish, after public consultation, a strategic plan every 3 years. Under the Crown Entities Act 2004, the Arts Council is required to prepare a statement of intent.

The arts boards and the South Pacific Arts Committee are dissolved and their powers, functions, and assets and liabilities are assumed by the Arts Council.

The powers and functions of the arts boards under the 1994 Act in relation to community arts providers and community arts councils will transfer to the Arts Council.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 provides that the Bill is to commence on a date to be appointed by the Governor-General by Order in Council, and that dif-

ferent dates may be appointed for different provisions and different purposes.

Part 1

Preliminary provisions and provisions relating to the Arts Council

Clause 3 states that the purpose of the Bill is to continue the Arts Council of New Zealand Toi Aotearoa (the **Arts Council**) for the purpose of encouraging, promoting, and supporting the arts in New Zealand for the benefit of all New Zealanders. The clause sets out the matters that must be recognised by persons exercising powers or performing functions under the Bill and the principles that must be applied, and preserves the principles set out in section 5 of the 1994 Act.

Clause 4 sets out definitions for certain key terms.

Clause 5 provides that the Bill is to bind the Crown.

Arts Council of New Zealand Toi Aotearoa

Clause 6 provides that the Bill continues the Arts Council as a Crown entity and that, except as otherwise expressly provided, the provisions of the Crown Entities Act 2004 apply to the Arts Council.

Functions and powers of Arts Council

Clause 7 sets out the functions of the Arts Council. These include encouraging, promoting, and supporting the arts for the benefit of all New Zealanders and promoting the development of a New Zealand identity in the arts. There are also functions in relation to funding, the rights of artists, and the maintenance of relationships with other organisations, as well as to provide advice to the Minister responsible for the administration of the Bill. In carrying out its functions the Arts Council must set guidelines for the allocation of funding and may also set guidelines for community arts providers and community arts councils. In addition, it must establish assessment processes for the allocation of funding including, if it considers it appropriate, peer assessment. Māori or Pacific Island people, as the case may be, must be included in any assessment process relevant to the arts of Māori or of Pacific Island peoples of New Zealand.

Clause 8 protects the independence of the Arts Council against Ministerial direction in relation to cultural matters.

Clause 9 provides that the Arts Council has, in addition to its powers under the Crown Entities Act 2004, the power to establish endowments or create trusts for purposes within the scope of the Bill and to appoint trustees.

Membership of Arts Council and committee of Arts Council

Clause 10 states that the Arts Council is to consist of 13 members. The Arts Council is a board for the purposes of the Crown Entities Act 2004. The clause sets out, in addition to the requirements for appointments under the Crown Entities Act 2004, other relevant considerations, including in particular those that arise in relation to—

- (a) the 4 persons who must be appointed in consultation with the Minister of Māori Affairs; and
- (b) the 2 persons who must be appointed in consultation with the Minister of Pacific Island Affairs.

Clause 11 provides that the 4 persons appointed under *clause 10(4)* are a committee of the Arts Council, with particular functions in relation to Māori arts.

Clause 12 requires the Arts Council periodically to advertise for nominations of persons to act as peer assessors and to keep a list of those nominations. The purpose of the list is to enable the public to know who is available to act as peer assessors. The list that is publicly available is to contain only the names of those nominated and the area of expertise or interest of each person named and is a public register under the Privacy Act 1993.

Taxation status of Arts Council

Clause 13 provides that the Arts Council is exempt from the payment of income tax.

Part 2

Community arts providers

Designated community arts providers

Clause 14 empowers the Arts Council to designate bodies, including local authorities, as community arts providers and to revoke that designation in a case where the body is not performing its role in accordance with any guidelines set by the Arts Council. The list of designated community arts providers is not a public register under the Privacy Act 1993.

Clause 15 permits the Arts Council to allocate funding to designated community arts providers, which in turn must allocate that funding to community arts projects in accordance with any guidelines of the Arts Council and the provisions of the Bill.

Community arts councils

Clause 16 empowers the Arts Council to establish community arts councils in relation to any particular geographical areas. A community arts council may apply to be designated as a community arts provider. There are powers for the Arts Council to disestablish a community arts council that is not complying with any guidelines set by the Council.

Unallocated funds must be repaid

Clause 17 provides that if the designation of a community arts provider is revoked or a community arts council disestablished, any funds that were allocated to the provider or council and that have not been allocated to a community arts project must be repaid to the Arts Council.

Local authorities may be given administrative responsibilities

Clause 18 makes provision for the Arts Council to appoint territorial authorities to administer community arts councils, subject to the consent of the authority in each case and to certain geographical restrictions being met. There is provision for an appointment to be revoked at the request of the relevant authority or on the initiative of the Arts Council, after written notice has been given.

Part 3

Miscellaneous provisions

Names protected

Clause 19 provides protection against the use by any other person or body of the names of the Arts Council, Creative New Zealand, the former Queen Elizabeth II Arts Council, and Te Waka Toi or any name likely to be confused with one of those names. There is also a prohibition against carrying on business under such a name. In addition, the clause protects the use of the terms “community arts council” and “arts council”, except by a community arts council within the meaning of the Bill. That prohibition does not apply in the case of an organisation that, though not a community arts council, was using a protected name as part of its name immediately before the commencement of the Bill. In this clause, protected name means one of the names listed or described in *subclause (1)*, and the names “community arts council” and “arts council”.

Dissolution of board and arts boards

Clause 20 provides that, on the commencement of the Bill, the term of office of the members of the Arts Council holding office immediately before the commencement of the Bill expires.

Clause 21 dissolves the arts boards established under the 1994 Act and the South Pacific Arts Committee recognised in that Act. Any property, information, or assets of the arts boards or Committee, and their liabilities, contracts, rights, entitlements, or authorities under the 1994 Act, become those of the Arts Council under the Bill. Proceedings commenced by or against an arts board or the Committee under the 1994 Act may be continued by the Arts Council. Loss of office does not attract compensation.

Savings and transitional provisions

Clauses 22 and 23 provide that references to the Queen Elizabeth II Arts Council or the Arts Council in an enactment or document are to be taken as references to the Arts Council continued by the Bill.

Clauses 24 and 25 provide that matters commenced but not completed under the 1994 Act are to be continued and completed by the Arts Council under the Bill, and similarly in relation to proceedings commenced but not completed or withdrawn under the 1994 Act.

Repeal and amendments

Clauses 26 and 27, respectively, repeal the 1994 Act and make consequential amendments to the enactments set out in the *Schedule*.

Hon Christopher Finlayson

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Arts Council of New Zealand Toi Aotearoa Act
2010.

2 Commencement 5
This Act comes into force on a date to be appointed by the
Governor-General by Order in Council, and 1 or more Orders
in Council may be made appointing different dates for differ-
ent provisions and different purposes.

Part 1 10
**Preliminary provisions and provisions
relating to Arts Council**

Preliminary matters

3 Purpose and principles

(1) The purpose of this Act is to continue the Arts Council of New 15
Zealand Toi Aotearoa, the national body for the arts estab-
lished under the Arts Council of New Zealand Toi Aotearoa
Act 1994, in order to encourage, promote, and support the arts
in New Zealand for the benefit of all New Zealanders.

(2) In achieving the purpose of this Act, all persons performing 20
functions or exercising powers under it must—

(a) recognise the cultural diversity of the people of New
Zealand; and

(b) recognise in the arts the role of Māori as tangata
whenua; and 25

(c) recognise the arts of the Pacific Island peoples of New
Zealand; and

(d) recognise and uphold the principles of—

(i) participation, by supporting initiatives that en-
courage participation in the arts; and 30

(ii) access, by supporting the availability of projects
of merit to communities or sections of the popu-
lation that would otherwise not have access to
them; and

- (iii) excellence and innovation, by supporting activities of artistic and cultural significance that develop the creative potential of artists and art forms; and
 - (iv) professionalism, by maintaining and developing a professional arts infrastructure at both the national and community levels; and 5
 - (v) advocacy, by promoting New Zealand's arts and artists locally, nationally, and internationally.
- 4 Interpretation** 10
- In this Act, unless the context otherwise requires,—
- 1994 Act** means the Arts Council of New Zealand Toi Aotearoa Act 1994
- arts** includes all forms of creative and interpretative expression 15
- Arts Council of New Zealand Toi Aotearoa** and **Arts Council** mean the Arts Council constituted by the 1994 Act and continued by this Act
- community arts**—
- (a) means projects undertaken within a local community that— 20
 - (i) may represent either a specific geographical area or defined community of interest; and
 - (ii) allow for access and participation by the wider community; and 25
 - (b) includes recreational arts
- community arts council** means a council provided for by **section 16**
- community arts provider** means a body designated under **section 14** 30
- Minister** means the Minister who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act
- professional arts** means projects that provide significant income for those undertaking the projects 35
- projects** includes productions, workshops, educational programmes, individual art works, programmes involving indi-

viduals, companies, or organisations, and other kinds of arts activities.

5 Act binds the Crown

This Act binds the Crown.

Arts Council of New Zealand Toi Aotearoa 5

6 Arts Council of New Zealand Toi Aotearoa continued

- (1) This section continues the national body for the arts known as the Arts Council of New Zealand Toi Aotearoa as a Crown entity for the purposes of section 7 of the Crown Entities Act 2004. 10
- (2) The Crown Entities Act 2004 applies to the Arts Council except to the extent that this Act expressly provides otherwise.

Functions and powers of Arts Council

7 Functions of Arts Council

- (1) The principal functions of the Arts Council are to— 15
 - (a) encourage, promote, and support the arts in New Zealand for the benefit of all New Zealanders:
 - (b) promote the development of a New Zealand identity in the arts:
 - (c) allocate funding to projects for professional and community arts, including funding for— 20
 - (i) Māori arts; and
 - (ii) the arts of the Pacific Island peoples of New Zealand; and
 - (iii) the arts of the diverse cultures of New Zealand: 25
 - (d) uphold and promote the rights of artists and the right of persons to freedom in the practice of the arts:
 - (e) maintain relationships with other agencies and organisations:
 - (f) give advice to the Minister on any matter relating to or affecting the functions of the Arts Council: 30
 - (g) perform any other functions conferred on it by this Act, any other enactment, or the Minister.
- (2) In carrying out its functions, the Arts Council—
 - (a) must set guidelines for the allocation of funding; and 35

- (b) may set guidelines for community arts councils and community arts providers; and
- (c) must establish assessment processes for the allocation of funding including, if the Arts Council considers it appropriate, the use of peer assessment; and 5
- (d) may obtain any advice that it considers appropriate.
- (3) In establishing any assessment process under **subsection (2)(c)**, the Arts Council must include—
- (a) Māori in any assessment process relevant to Māori arts; and 10
- (b) Pacific Island people in any assessment process relevant to the arts of the Pacific Island peoples of New Zealand.
- 8 Restriction on Ministerial direction**
- The Minister may not give a direction to the Arts Council in relation to cultural matters. 15
- 9 Powers**
- (1) Without limiting sections 16 and 17 of the Crown Entities Act 2004, the Arts Council has power—
- (a) to establish any endowments or create any trusts on any terms and conditions, and for any objects within the purposes of this Act, that the Arts Council thinks fit; and 20
- (b) to appoint trustees in respect of any of those endowments or trusts.
- (2) Trustees appointed in respect of a trust must keep accounts in a manner that will enable the Arts Council to fulfil its obligations under section 154 of the Crown Entities Act 2004. 25
- Membership of Arts Council and committee of
Arts Council*
- 10 Membership of Arts Council** 30
- (1) The Arts Council consists of 13 members appointed by the Minister.
- (2) Members of the Arts Council are the board for the purposes of the Crown Entities Act 2004.

- (3) In appointing the members, the Minister must have regard to the need for members to have among them a broad knowledge of arts practices, including knowledge of professional and community arts.
- (4) At least 4 of the persons appointed as members of the Arts Council must be persons who, in the opinion of the Minister, after consultation with the Minister of Māori Affairs, are qualified for appointment, having regard to their knowledge of—
- (a) te ao Māori (Māori world view); and
 - (b) tikanga Māori (Māori protocol and culture); and
 - (c) Māori arts.
- (5) At least 2 of the persons appointed as members of the Arts Council must be persons who, in the opinion of the Minister after consultation with the Minister of Pacific Island Affairs, are qualified by their knowledge of the arts of the Pacific Island peoples of New Zealand.
- (6) This section is in addition to section 29 of the Crown Entities Act 2004.
- 11 Committee of Arts Council**
- (1) The persons appointed as members of the Arts Council under **section 10(4)** are a committee of the Arts Council.
- (2) The functions of that committee are—
- (a) to give advice to the Arts Council on matters relevant to the functions of the Council in relation to Māori arts; and
 - (b) any other functions that the Arts Council delegates to the committee.
- (3) This section does not limit—
- (a) the application of the Crown Entities Act 2004 to the committee referred to in **subsection (1)**; or
 - (b) the power of the Arts Council under that Act—
 - (i) to appoint other committees; or
 - (ii) to delegate its functions.
- 12 Nomination of peer assessors**
- (1) The Arts Council must, from time to time and in the manner that it thinks fit, publicly invite nominations of persons with

- an interest in undertaking peer assessment for the purpose of the Arts Council's function under **section 7(2)(c)**.
- (2) The Arts Council must—
- (a) keep and maintain, in any manner it thinks fit, a public register of nominations received under **subsection (1)**; 5
and
- (b) make the register available for public inspection at its offices during normal office hours.
- (3) The purpose of the register is to enable members of the public to know who has been nominated under **subsection (1)**. 10
- (4) The register must contain, for each person nominated,—
- (a) the name of the person; and
- (b) the area of that person's art expertise or interest.
- (5) Other information collected in the course of receiving nominations will not be publicly available. 15

Taxation status of Arts Council

13 Income tax exemption

The Arts Council is exempt from the payment of income tax.

Part 2

Community arts providers 20

Designated community arts providers

14 Arts Council may designate community arts providers

- (1) Any body involved in community arts, including any local authority, may apply in writing to the Arts Council to be designated as a community arts provider. 25
- (2) The Arts Council may designate a body as a community arts provider if the Arts Council is satisfied that—
- (a) the body complies with any guidelines set by the Council for community arts providers; and
- (b) the body represents, in relation to the arts, either a specific geographical area or a defined community of interest. 30
- (3) The Arts Council may, if satisfied that a designated community arts provider has not complied with, or is not performing according to, any guidelines set by the Council,— 35

- (a) give the community arts provider not less than 60 days' written notice of its intention to revoke its designation; and
 - (b) proceed to revoke the designation.
- (4) The Arts Council must maintain a register of designated community arts providers. 5

15 Allocation of funding

- (1) The Arts Council may allocate funding to a designated community arts provider.
- (2) A designated community arts provider to which funds are allocated must allocate those funds to community arts projects— 10
 - (a) in accordance with guidelines set by the Arts Council; and
 - (b) having regard to the principles set out in **section 3(2)**.

Community arts councils 15

16 Community arts councils

- (1) The Arts Council may establish community arts councils in relation to specific geographical areas.
- (2) A community arts council may regulate its own procedure, subject to— 20
 - (a) the provisions of this Act; and
 - (b) any guidelines set by the Arts Council for community arts councils.
- (3) A community arts council may apply in writing to the Arts Council to be designated as a community arts provider. 25
- (4) If the Arts Council is satisfied that a community arts council has not complied with, or is not performing in accordance with, any guidelines set by the Council, it may disestablish the community arts council after giving it not less than 60 days' written notice of its intention to do so. 30

Unallocated funds must be repaid

17 Funds to be repaid to Arts Council

- (1) This section applies if funds are allocated—

- (a) to a designated community arts provider, but the designation is revoked under **section 14(3)**; or
 - (b) to a community arts council, but it is disestablished under **section 16(4)**.
- (2) Provided the funds have not been allocated to a community arts project, the funds must be repaid to the Arts Council. 5

Local authorities may be given administrative responsibilities

18 Administration by local authorities

- (1) The Arts Council may appoint a local authority to have administrative responsibility for a community arts council, but only if— 10
- (a) the boundaries of that local authority lie wholly or partly within the area for which the community arts council carries out its activities; and 15
 - (b) the local authority has consented in writing to the appointment.
- (2) A local authority—
- (a) may give consent on the terms it considers appropriate for a representative of the local authority to be a member of the community arts council; and 20
 - (b) must either—
 - (i) provide reasonable administrative and secretarial services to the community arts council; or
 - (ii) make a reasonable grant to the community arts council to enable it to provide for those services. 25
- (3) If a local authority has administrative responsibility under **subsection (1)**, it may—
- (a) appoint representatives of a community arts council to attend and participate in any meeting of the local authority that is to consider funding of the arts; and 30
 - (b) consult a community arts council on any proposed policies, facilities, or activities of the local authority that relate to the arts.
- (4) The Arts Council must, if requested in writing by a local authority appointed under **subsection (1)**, revoke the appointment of that local authority, and the revocation takes effect at 35

the end of the period that is 3 months after the date of the request.

- (5) The Arts Council may revoke the appointment of a local authority under **subsection (1)** after giving not less than 60 days' notice in writing to the local authority and the community arts council of its intention to do so. 5
- (6) In this section, **local authority** means a territorial authority within the meaning of section 5(1) of the Local Government Act 2002.

Part 3 Miscellaneous provisions

10

Names protected

19 Protection of names

- (1) No body may be incorporated or registered under any other enactment or in any other manner under any of the following names: 15
- (a) Arts Council of New Zealand Toi Aotearoa and Arts Council:
 - (b) Creative New Zealand:
 - (c) Queen Elizabeth II Arts Council: 20
 - (d) Te Waka Toi:
 - (e) any other name that so resembles a name listed in **paragraphs (a) to (d)** as to be likely to mislead a person.
- (2) No person or body other than the Arts Council may, either alone or with another person or body, operate or carry on activities under a name listed or described in **subsection (1)**. 25
- (3) No body other than a community arts council within the meaning of this Act may be incorporated or registered, or may operate or carry on activities, under any enactment or in any other manner under a name that includes the words “community arts council” or “arts council”. 30
- (4) However, **subsection (3)** does not apply to a body that, immediately before the commencement of this Act, included a protected name in its name.
- (5) For the purposes of **subsection (4)**, a **protected name** is— 35
- (a) a name listed or described in **subsection (1)**:

- (b) “community arts council”:
- (c) “arts council”.

Transitional provisions

- 20 Expiry of term of office of members of Arts Council** 5
- On and from the commencement of this Act, the term of office of every member of the Arts Council appointed under section 9 of the 1994 Act and holding office immediately before the commencement of this Act expires.
- 21 Arts boards dissolved**
- (1) On and from the commencement of this Act,— 10
- (a) the 2 arts boards established under section 13 of the 1994 Act and the South Pacific Arts Committee (the **Committee**) referred to in that Act and existing immediately before the commencement of this Act are dissolved; and 15
 - (b) the term of office of every member of those boards and of the Committee expires.
- (2) Any property, information, and other assets of the arts boards or of the Committee vest in the Arts Council under this Act.
- (3) Any money payable to or by the arts boards or the Committee under the 1994 Act becomes payable to or by the Arts Council under this Act. 20
- (4) The liabilities, contracts, rights, entitlements, and authorities of the arts boards or of the Committee are transferred to the Arts Council under this Act. 25
- (5) If, immediately before the commencement of this Act, an arts board or the Committee had any responsibility for a matter under the 1994 Act, the responsibility for that matter transfers to the Arts Council for determination under this Act.
- (6) Proceedings by or against an arts board or the Committee may be continued, completed, or enforced by or against the Arts Council under this Act. 30
- (7) The dissolution of the arts boards and of the Committee does not affect—
- (a) the validity of any decisions made in accordance with the 1994 Act; or 35

- (b) any guidelines set under section 14(1)(h) of that Act.
- (8) No person who was a member of an arts board or of the Committee is entitled to compensation as a result of the expiry under this section of his or her term of office.

Savings and transitional provisions 5

22 References to Queen Elizabeth II Arts Council

A reference in an enactment or document to the Queen Elizabeth II Arts Council is a reference to the Arts Council of New Zealand Toi Aotearoa continued by this Act.

23 References to Arts Council 10

On and from the commencement of this Act, unless the context otherwise requires, references to the Arts Council of New Zealand Toi Aotearoa in any contract or other instrument, document, or notice must be read as a reference to the Arts Council continued by this Act. 15

24 General transitional provision

Matters to which the 1994 Act applied that were, immediately before the commencement of this Act, commenced but not completed under the 1994 Act are to be continued and completed by the Arts Council under this Act. 20

25 Continuation of proceedings

(1) This section applies to proceedings under the 1994 Act that were commenced before the date on which this Act comes into force but not finally determined or withdrawn before that date.

(2) Proceedings to which this section applies continue under this Act as if those proceedings were commenced under this Act (whether the hearing of the proceedings commenced before or after the date on which this Act comes into force). 25

Repeal and amendments

26 Act repealed 30

The Arts Council of New Zealand Toi Aotearoa Act 1994 is repealed.

27 Consequential amendments

The enactments specified in the Schedule are consequentially amended in the manner set out in that schedule.

Schedule

s 27

Consequential amendments

Archives, Culture, and Heritage Reform Act 2000 (2000 No 32)

Definition of **responsible ministry** in section 4: omit “1994” and substitute “**2010**”.

5

Estate and Gift Duties Act 1968 (1968 No 35)

Section 73(2)(c): repeal and substitute:

“(c) any gift to the Arts Council of New Zealand Toi Aotearoa for the purposes of the Arts Council of New Zealand Toi Aotearoa Act **2010**.”.

10

Gambling Act 2003 (2003 No 51)

Section 279(1)(a): omit “1994” and substitute “**2010**”.

Privacy Act 1993 (1993 No 28)

Part 1 of Schedule 2: insert in its appropriate alphabetical order
Arts Council of New Zealand **Section 12**
Toi Aotearoa Act **2010**

Public Audit Act 2001 (2001 No 10)

Item relating to arts boards in Schedule 2: omit.

15