

# **Arts Council of New Zealand Toi Aotearoa Bill**

Government Bill

As reported from the Government  
Administration Committee

## **Commentary**

### **Recommendation**

The Government Administration Committee has examined the Arts Council of New Zealand Toi Aotearoa Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Arts Council of New Zealand Toi Aotearoa Bill seeks to repeal the Arts Council of New Zealand Toi Aotearoa Act 1994. The bill would replace the current governance structure of the Arts Council of New Zealand Toi Aotearoa with a unitary board, called the Arts Council, comprising 13 members.

### **Commencement**

We recommend amending clause 2 to provide for the Act to come into force on 1 October 2011. After receiving advice from the Regulations Review Committee we do not believe that the commencement of the

Act by Order in Council in clause 2 of the bill as introduced is in accord with the guidelines of the Legislation Advisory Committee.

### **Definition of community arts**

We recommend that clause 4 be amended to delete the word “local” from the definition of community arts. We consider that the definition of community arts in the bill as introduced is too narrow and exclusive. Community arts activities take place at not only the local and regional levels but also at the national level. National bodies often coordinate and support community arts.

### **Membership of the Arts Council**

We were concerned that the definition of cultural knowledge in clause 10(5) might allow a person with knowledge of Pacific arts but limited knowledge of Pacific cultures and traditions to be appointed to the Arts Council. We consider it important that the person appointed under this clause also have knowledge of the cultural and traditional context of Pacific arts. We recommend adding a requirement for members appointed to the Arts Council as representatives of the Pacific Island peoples of New Zealand to demonstrate knowledge of Pacific traditions or cultures, as well as knowledge of the arts.

### **New Zealand Labour Party Minority View**

New Zealand Labour opposes this bill based on the following aspects:

We believe that Pacific Island, Māori, ethnic and other marginalised groups such as those with a disability and children’s voices will be overwhelmed by the new structure of the proposed “streamlined” council.

Many from those communities who were involved in the consultation process have since expressed their concern to us. They have felt that if they spoke out during the submission stage of the Select Committee that their organisation might be adversely affected for any future funding application.

We believe the dissolution of the Te Waka Toi Committee (Clause 10(4)) and replacement with four qualified persons to represent

Māori and their culture on a council of thirteen members could result in the loss of a distinctive identity for Māori.

The dissolution of the South Pacific Arts Committee (Clause 10(5)) and replacement with only two members to represent Pacific Island peoples and their culture also has the potential for a loss of distinctive recognition of the differences between Pacific communities.

We will also monitor the impact on the loss of these two committees and review future funding decisions of the council to ensure they reflect the ethnic diversity they represent. We are not convinced that the assessment process by a subordinate panel as established in subsection 2(c) gives due recognition of the cultural value to the applicant.

We remain concerned that community arts development funding may suffer at the hands of professional arts funding demands. A community arts policy yet to be completed may assist the council gaining a greater understanding of the value of community arts development.

## **Appendix**

### **Committee process**

The Arts Council of New Zealand Toi Aotearoa Bill was referred to the committee on 18 August 2010. The closing date for submissions was 8 October 2010. We received and considered 15 submissions from interested groups and individuals. We heard three submissions. We received advice from the Ministry for Culture and Heritage. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

### **Committee membership**

Hon David Parker (Chairperson)

Kanwaljit Singh Bakshi

Jacqui Dean

John Hayes

Chris Hipkins

Nikki Kaye

Grant Robertson

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Christopher Finlayson*

# **Arts Council of New Zealand Toi Aotearoa Bill**

Government Bill

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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 different provisions and different purposes~~ 1 October 2011.

**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 Zealand Toi Aotearoa, the national body for the arts established 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. 15

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

(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 encourage participation in the arts; and 30

(ii) access, by supporting the availability of projects of merit to communities or sections of the population that would otherwise not have access to them; 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, and of the traditions or cultures, 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)**. 5
- (2) The Arts Council must—
- (a) keep and maintain, in any manner it thinks fit, a public register of nominations received under **subsection (1)**; and
  - (b) make the register available for public inspection at its offices during normal office hours. 10
- (3) The purpose of the register is to enable members of the public to know who has been nominated under **subsection (1)**.
- (4) The register must contain, for each person nominated,—
- (a) the name of the person; and 15
  - (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.

*Taxation status of Arts Council*

- 13 Income tax exemption** 20  
The Arts Council is exempt from the payment of income tax.

**Part 2****Community arts providers***Designated community arts providers*

- 14 Arts Council may designate community arts providers** 25
- (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.
- (2) The Arts Council may designate a body as a community arts provider if the Arts Council is satisfied that— 30
- (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. 35

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

**15 Allocation of funding** 10

- (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—
- (a) in accordance with guidelines set by the Arts Council; 15
  - and
  - (b) having regard to the principles set out in **section 3(2)**.

*Community arts councils*

**16 Community arts councils** 20

- (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—
- (a) the provisions of this Act; and
  - (b) any guidelines set by the Arts Council for community arts councils. 25
- (3) A community arts council may apply in writing to the Arts Council to be designated as a community arts provider.
- (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 5
  - (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.

*Local authorities may be given administrative responsibilities* 10**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— 15
- (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
  - (b) the local authority has consented in writing to the appointment. 20
- (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
  - (b) must either— 25
    - (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.
- (3) If a local authority has administrative responsibility under **subsection (1)**, it may— 30
- (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
  - (b) consult a community arts council on any proposed policies, facilities, or activities of the local authority that relate to the arts. 35



- (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 the end of the period that is 3 months after the date of the request. 5
- (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.
- (6) In this section, **local authority** means a territorial authority within the meaning of section 5(1) of the Local Government Act 2002. 10

### Part 3 Miscellaneous provisions

#### *Names protected* 15

#### **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:
- (a) Arts Council of New Zealand Toi Aotearoa and Arts Council: 20
  - (b) Creative New Zealand:
  - (c) Queen Elizabeth II Arts Council:
  - (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. 25
- (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)**.
- (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—
- (a) a name listed or described in **subsection (1)**: 5
  - (b) “community arts council”:
  - (c) “arts council”.

*Transitional provisions*

- 20 Expiry of term of office of members of Arts Council** 10  
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** 15
- (1) On and from the commencement of this Act,—
- (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 20
  - (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. 25
- (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. 30
- (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.
- (7) The dissolution of the arts boards and of the Committee does not affect— 5
- (a) the validity of any decisions made in accordance with the 1994 Act; or
  - (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 10 under this section of his or her term of office.

*Savings and transitional provisions*

**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. 15

**23 References to Arts Council**

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. 20

**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. 25

**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. 30
- (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).

*Repeal and amendments*

**26 Act repealed**

The Arts Council of New Zealand Toi Aotearoa Act 1994 is 5 repealed.

**27 Consequential amendments**

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

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## Schedule

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### Consequential amendments

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

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

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#### **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**.”.

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#### **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.

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### Legislative history

25 June 2010  
18 August 2010

Introduction (Bill 167–1)  
First reading and referral to Government  
Administration Committee

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