

# Film Act 2001

Act No. 87/2001

## TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
<b>PART 1—PRELIMINARY</b>	<b>1</b>
1. Purposes	1
2. Commencement	2
3. Definitions	2
4. Objectives	2
<b>PART 2—FILM VICTORIA</b>	<b>4</b>
<b>Division 1—Establishment of Film Victoria</b>	<b>4</b>
5. Establishment of Film Victoria	4
6. Film Victoria represents the Crown	4
7. Functions of Film Victoria	5
8. Powers of Film Victoria	6
9. Directions of Minister	7
10. Delegation	8
11. Constitution of Film Victoria	8
12. Membership of Film Victoria not office of profit	9
13. Acting appointments	9
14. Committees	10
15. Chief Executive Officer	10
16. Other staff	11
17. Schedule	11
<b>Division 2—Financial Provisions</b>	<b>11</b>
18. Borrowing and investment powers	11
19. Investment General Fund	11
20. Account	12
<b>PART 3—AUSTRALIAN CENTRE FOR THE MOVING IMAGE</b>	<b>14</b>
<b>Division 1—Establishment of the Australian Centre for the Moving Image</b>	<b>14</b>
21. Establishment of Australian Centre for the Moving Image	14
22. ACMI represents the Crown	14
23. Functions of ACMI	15

<i>Section</i>	<i>Page</i>
24. Powers of ACMI	16
25. Collection of moving images	17
26. Sale or disposal of an item in the collection of moving images	17
27. ACMI subject to the control of the Minister	18
28. Delegation	18
29. ACMI may make by-laws	18
30. Constitution of ACMI	19
31. Membership of ACMI not office of profit	19
32. Acting appointments	20
33. Committees	20
34. Chief Executive Officer	21
35. Other staff	21
36. Schedule	21
<b>Division 2—Financial Provisions</b>	<b>22</b>
37. Borrowing and investment powers	22
38. Account	22
<b>PART 4—GENERAL</b>	<b>23</b>
<b>Division 1—Conflict of interest</b>	<b>23</b>
39. Definitions	23
40. Conflicts of interest—member	23
41. Conflicts of interest—committees	24
42. Conflicts of interest—Chief Executive Officer and employees	25
<b>Division 2—Regulations</b>	<b>26</b>
43. Regulations	26
<b>PART 5—TRANSITIONAL PROVISIONS</b>	<b>27</b>
44. Definitions	27
45. Transfer Order	28
46. Film Victoria and ACMI to be successors in law of Corporation	28
47. Substitution of party to agreement	29
48. Proceedings	29
49. Interests in land	29
50. Instrument of the Corporation	30
51. Amendment of the Register	30
52. Taxes	30
53. Evidence	30
54. List of staff	31
55. Transfer of staff	32
56. Future terms and conditions of transferred employees	33
57. Validity of things done under this Part	33

<i>Section</i>	<i>Page</i>
<b>PART 6—CONSEQUENTIAL AMENDMENTS</b>	<b>35</b>
58. Repeal of <b>Cinemia Corporation Act 1997</b>	35
59. Amendment to the <b>Borrowing and Investment Powers Act 1987</b>	35
60. Amendment to the <b>Corporations (Consequential Amendments) Act 2001</b>	35
—————	
<b>SCHEDULE—Common provisions applying to Film Victoria and ACMI</b>	<b>36</b>
=====	
<b>ENDNOTES</b>	<b>39</b>



Victoria

No. 87 of 2001

## Film Act 2001<sup>†</sup>

[Assented to 11 December 2001]

The Parliament of Victoria enacts as follows:

### PART 1—PRELIMINARY

#### 1. *Purposes*

The purposes of this Act are—

- (a) to establish Film Victoria; and
- (b) to establish the Australian Centre for the Moving Image; and
- (c) to repeal the **Cinemia Corporation Act 1997** and to abolish the Cinemia Corporation established under that Act.

## **2. Commencement**

- (1) This Part and sections 44, 45 and 54 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 July 2002, it comes into operation on that day.

## **3. Definitions**

In this Act—

**"ACMI"** means the Australian Centre for the Moving Image established by section 21;

**"film"** in section 4 and in Part 2, means a recording in or on material of any kind (whether invented at the commencement of this section or not) from which moving images, with or without associated sounds, may be produced;

**"Film Victoria"** means the body established by section 5;

**"moving image"** in Part 3, means any image created in a film, video, digital or other media format, being an image that alters with time and that is able to be displayed on a screen.

## **4. Objectives**

The objectives of this Act are—

- (a) to establish Film Victoria to provide strategic leadership and assistance to the film, television and multimedia industry of Victoria to encourage innovation and the

creation of new projects of high quality that are of economic or cultural benefit to Victoria; and

- (b) to establish the Australian Centre for the Moving Image to feature and exhibit film, television and multimedia programs and to promote public education in relation to screen content and culture.
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**PART 2—FILM VICTORIA**

**Division 1—Establishment of Film Victoria**

**5. *Establishment of Film Victoria***

- (1) There is established by this Act a body by the name of Film Victoria.
- (2) Film Victoria—
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue or be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of Film Victoria must be kept as directed by Film Victoria and must not be used except as authorised by Film Victoria.
- (4) All courts must take judicial notice of the seal of Film Victoria affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

**6. *Film Victoria represents the Crown***

In performing its functions and duties and exercising its powers under this Act, Film Victoria represents the Crown.

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**7. Functions of Film Victoria**

The functions of Film Victoria are—

- (a) to provide financial and other assistance to the film, television and multimedia industry in Victoria;
- (b) to promote, whether in Victoria or elsewhere, the use of locations or services in Victoria for the production of any film, television or multimedia project;
- (c) to provide financial assistance, whether in Victoria or elsewhere, to organisations, events or activities including festivals, conferences, publications or exhibitions, where film or other screen-based programs are made, seen or discussed;
- (d) to establish and facilitate, whether in Victoria or elsewhere, relationships for the development of film, television or multimedia programs;
- (e) to provide leadership to the film, television and multimedia industry in Victoria;
- (f) to develop strategic plans for the development and improvement of the film, television and multimedia industry in Victoria;
- (g) to advise the Minister on matters relating to the film, television and multimedia industry in Victoria;
- (h) to develop relationships or enter into partnerships with other organisations, including government bodies, whether in Victoria or elsewhere, to improve the film, television and multimedia industry in Victoria.



### **8. Powers of Film Victoria**

- (1) Film Victoria has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.
  - (2) Without limiting sub-section (1), Film Victoria may, in connection with the performance of its functions—
    - (a) enter into contracts, agreements or arrangements with any person or body and do everything, including the payment of money, that is necessary or expedient for carrying the contracts, agreements or arrangements into effect;
    - (b) acquire, hold and dispose of real or personal property;
    - (c) be a member of a body corporate, association, partnership, trust or other body;
    - (d) form, or participate in the formation of, a body corporate, association, partnership, trust or other body;
    - (e) enter into a joint venture with another person or other persons;
    - (f) do all things necessary or convenient to be done for, or in connection with, a joint venture in the performance of its functions;
    - (g) accept gifts, grants, bequests and devises made to it and act as trustee of money or other property vested in it on trust;
    - (h) lend or grant money on any terms and conditions that it thinks fit;
    - (i) provide consultancy and project management services;
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- (j) acquire, or enter into agreements or arrangements with respect to the acquisition of, the copyright, or an interest in the copyright, in any film television or multimedia program;
  - (k) charge and receive fees fixed by Film Victoria in respect of any services supplied by Film Victoria.

**9. *Directions of Minister***

- (1) In the exercise of its powers and performance of its functions, Film Victoria is subject to—
  - (a) the direction and control of the Minister; and
  - (b) without limiting paragraph (a), any direction given by the Minister in writing in relation to the making of a loan or grant of money, or a class of loans or grants of money, specified in the direction.
- (2) A direction under this section may include a direction that a loan or grant of money or a class or classes of loans or grants of money specified in the direction be approved by the Minister.
- (3) As soon as possible after giving a direction in writing to Film Victoria, the Minister must cause a copy of the direction to be published in the Government Gazette.
- (4) Film Victoria must include in the annual report of operations a copy of each direction given to it in writing by the Minister during the year to which the report relates.

### **10. Delegation**

Film Victoria may, by instrument under its common seal, delegate to—

- (a) the members constituting a committee of Film Victoria, if the committee includes 2 or more members of Film Victoria; or
- (b) the Chief Executive Officer; or
- (c) any of its members; or
- (d) any member of its staff—

any power or function of Film Victoria other than this power of delegation.

### **11. Constitution of Film Victoria**

- (1) Film Victoria shall consist of not more than 11 members and not fewer than 7 members appointed by the Governor in Council on the recommendation of the Minister.
  - (2) In making a recommendation under sub-section (1) the Minister must ensure that—
    - (a) the majority of members are to be chosen from persons who, in the opinion of the Minister, are experienced in the film, television or multimedia industry; and
    - (b) the remaining members are to be chosen from persons who, in the opinion of the Minister, are experienced in business administration or another field appropriate to the functions of Film Victoria.
  - (3) The Governor in Council must appoint a member of Film Victoria to be President of Film Victoria.
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- (4) A person appointed under sub-section (3)—
- (a) is to be appointed for a term not exceeding 3 years;
  - (b) is eligible for re-appointment;
  - (c) ceases to hold his or her position if he or she ceases to be a member of Film Victoria.

**12. *Membership of Film Victoria not office of profit***

A member of Film Victoria is not to be taken by reason of being a member to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
- (b) make void the member's election to the Legislative Council or Legislative Assembly; or
- (c) prevent the member continuing to be a member of the Legislative Council or Legislative Assembly; or
- (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

**13. *Acting appointments***

- (1) The Minister may appoint a person to act as a member—
  - (a) during a vacancy in the office of a member; or
  - (b) during any period, or during all periods, when a member is unable, for any reason, to attend meetings of Film Victoria.

- (2) A person appointed to act as a member—
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- (a) has the rights, powers and duties of the member for whom he or she acts; and
- (b) is entitled to be paid remuneration, sitting fees, travelling expenses or other expenses fixed by the Minister.

**14. Committees**

- (1) Film Victoria may—
  - (a) establish any committees it considers necessary and define the constitution and functions of each committee so established;
  - (b) determine the procedure of each committee;
  - (c) change the constitution or functions of a committee;
  - (d) dissolve a committee.
- (2) The members of a committee established by Film Victoria must include at least one member of Film Victoria.
- (3) A person may be a member of a committee established by Film Victoria even though he or she is not a member of Film Victoria.
- (4) A member of a committee established by Film Victoria is entitled to receive any fees or travelling expenses or other expenses determined by Film Victoria.

**15. Chief Executive Officer**

- (1) There shall be a Chief Executive Officer of Film Victoria who, subject to and in accordance with the directions given to him or her by Film Victoria, shall have control of the day to day management of the affairs of Film Victoria.
  - (2) The Chief Executive Officer shall be appointed by Film Victoria, with the approval of the Minister, for the term, not exceeding 5 years, that is
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specified in the instrument of appointment but is eligible for re-appointment.

- (3) The Chief Executive Officer holds office, subject to this Act, on the terms and conditions that are specified in the instrument of appointment.
- (4) Film Victoria must not remove the Chief Executive Officer from office except with the approval of the Minister.

**16. *Other staff***

Film Victoria may employ any persons necessary for the performance of its functions.

**17. *Schedule***

The Schedule applies to Film Victoria.

**Division 2—Financial Provisions**

**18. *Borrowing and investment powers***

Film Victoria has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

**19. *Investment General Fund***

- (1) Film Victoria must establish and maintain a fund to be known as the Investment General Fund.
  - (2) There must be paid into the Fund—
    - (a) any money that Film Victoria from time to time determines should be paid into the Fund from money held by Film Victoria;
    - (b) any money received by Film Victoria as a return on or in relation to any investment by Film Victoria in relation to the production of film or television programs;
    - (c) any income arising from the investment of the Fund.
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- (3) Film Victoria must cause the money in the Fund to be paid into an account or accounts in any authorised deposit-taking institution or institutions within the meaning of the Banking Act 1959 of the Commonwealth approved for the purpose by the Treasurer.
- (4) All money standing to the credit of the Fund which is not for the time being required for the purposes of this Act may be invested in such manner as the Treasurer approves.
- (5) Money standing to the credit of the Fund must be applied by Film Victoria to provide financial assistance for or in relation to the production of film or television programs in Victoria.

#### **20. Account**

- (1) Film Victoria must establish and maintain in an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth approved for the purpose by the Treasurer an account in the name of Film Victoria into which is paid all money received by or paid to Film Victoria other than any money to which sub-section (3) applies.
  - (2) Money standing to the credit of Film Victoria in the account established under this section may be applied by Film Victoria only for or towards the costs and expenses of or incidental to the performance of the functions or the exercise of the powers of Film Victoria under this Act.
  - (3) This section does not apply to—
    - (a) any money that must be paid into the Investment General Fund in accordance with section 19(2);
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- (b) any money received or paid out by Film Victoria subject to and in accordance with the terms of a special trust.
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**PART 3—AUSTRALIAN CENTRE FOR THE MOVING  
IMAGE**

**Division 1—Establishment of the Australian Centre for the  
Moving Image**

**21. *Establishment of Australian Centre for the Moving  
Image***

- (1) There is established by this Act a body by the name of Australian Centre for the Moving Image.
- (2) ACMI—
  - (a) is a body corporate with perpetual succession;
  - (b) has a common seal;
  - (c) may sue or be sued in its corporate name;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) The common seal of ACMI must be kept as directed by ACMI and must not be used except as authorised by ACMI.
- (4) All courts must take judicial notice of the seal of ACMI affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

**22. *ACMI represents the Crown***

In performing its functions and duties and exercising its powers under this Act, ACMI represents the Crown.

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**23. Functions of ACMI**

The functions of ACMI are—

- (a) to promote and exhibit, whether in Victoria or elsewhere, the moving image to the public or to any sector of the public;
- (b) to develop, control, manage, operate and promote ACMI and any facilities under the control of ACMI;
- (c) to promote, whether in Victoria or elsewhere, ACMI as a national centre for the creation and exhibition of the moving image and promotion of events or activities including festivals, conferences, publications or exhibitions, where film or other screen-based programs are made, seen or discussed;
- (d) to establish, maintain, conserve, develop, promote and exhibit, whether in Victoria or elsewhere, the collection of moving images;
- (e) to make, whether in Victoria or elsewhere, any item from the collection of moving images available for study or loan to persons or institutions, subject to any conditions that ACMI determines;
- (f) to promote, whether in Victoria or elsewhere, public education and discussion with reference to the moving image;
- (g) to develop and create, whether in Victoria or elsewhere, exhibitions of the moving image;
- (h) to develop and create, whether in Victoria or elsewhere, materials for educational or other programs conducted by ACMI;

- (i) to conduct, whether in Victoria or elsewhere, research and development in relation to the moving image;
- (j) to develop relationships or enter into partnerships with other organisations, including government bodies, whether in Victoria or elsewhere, to promote public education in relation to the moving image.

#### **24. Powers of ACMI**

- (1) ACMI has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.
  - (2) Without limiting sub-section (1), ACMI may, in connection with the performance of its functions—
    - (a) enter into contracts, agreements or arrangements with any person or body and do everything, including the payment of money, that is necessary or expedient for carrying the contracts, agreements or arrangements into effect;
    - (b) subject to this Act, acquire, hold and dispose of real or personal property;
    - (c) be a member of a body corporate, association, partnership, trust or other body;
    - (d) form, or participate in the formation of, a body corporate, association, partnership, trust or other body;
    - (e) enter into a joint venture with another person or other persons;
    - (f) do all things necessary or convenient to be done for, or in connection with, a joint venture in the performance of its functions;
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- (g) accept gifts, grants, bequests and devises made to it and act as trustee of money or other property vested in it on trust;
  - (h) provide consultancy and project management services;
  - (i) acquire, or enter into agreements or arrangements with respect to the acquisition of, the copyright, or an interest in the copyright, in any film television or multimedia program;
  - (j) make available for public use items from the collection of moving images.

**25. *Collection of moving images***

The collection of moving images comprises all moving images that are—

- (a) vested in ACMI and accepted by ACMI for the collection of moving images;
- (b) acquired by ACMI and accepted by ACMI for the collection of moving images;
- (c) given or bequeathed to ACMI and accepted by ACMI for the collection of moving images.

**26. *Sale or disposal of an item in the collection of moving images***

Despite anything to the contrary in this Act, ACMI must not sell or dispose of an item in the collection of moving images except in accordance with a resolution of ACMI, approved by the Minister, that retention of that item, or items of that class, is unnecessary or inappropriate to the activities of ACMI.

**27. ACMI subject to the control of the Minister**

In performing its functions and exercising its powers under this Act, ACMI is subject to the direction and control of the Minister.

**28. Delegation**

ACMI may, by instrument under its common seal, delegate to—

- (a) the members constituting a committee of ACMI, if the committee includes 2 or more members of ACMI; or
- (b) the Chief Executive Officer; or
- (c) any of its members; or
- (d) any member of its staff—

any power or function of ACMI other than—

- (e) this power of delegation; and
- (f) any power to make by-laws.

**29. ACMI may make by-laws**

ACMI may make by-laws not inconsistent with this Act or the regulations with respect to—

- (a) regulating admission to or exclusion from any facility under the control of and used by ACMI in the performance of its functions, including the charging of fees for admission to that facility; and
  - (b) the safeguarding of the contents of any facility under the control of and used by ACMI in the performance of its functions against theft or damage; and
  - (c) the preservation, inspection, copying or lending of items in the collection of moving images or other material under the control of ACMI; and
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- (d) the charging and receiving of fees for services provided by ACMI and the imposition of charges for late returns of loaned items.

**30. *Constitution of ACMI***

- (1) ACMI shall consist of not more than 11 members and not fewer than 7 members appointed by the Governor in Council on the recommendation of the Minister.
- (2) In making a recommendation under sub-section (1) the Minister must ensure that members are to be chosen from persons who, in the opinion of the Minister, are experienced in the film, television or multimedia industry or are experienced in business administration or education or another field appropriate to the functions of ACMI.
- (3) The Governor in Council must appoint a member of ACMI to be President of ACMI.
- (4) A person appointed under sub-section (3)—
- (a) is to be appointed for a term not exceeding 3 years;
  - (b) is eligible for re-appointment;
  - (c) ceases to hold his or her position if he or she ceases to be a member of ACMI.

**31. *Membership of ACMI not office of profit***

A member of ACMI is not to be taken by reason of being a member to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or

- (b) make void the member's election to the Legislative Council or Legislative Assembly; or
- (c) prevent the member continuing to be a member of the Legislative Council or Legislative Assembly; or
- (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

### **32. *Acting appointments***

- (1) The Minister may appoint a person to act as a member—
  - (a) during a vacancy in the office of a member; or
  - (b) during any period, or during all periods, when a member is unable, for any reason, to attend meetings of ACMI.
- (2) A person appointed to act as a member—
  - (a) has the rights, powers and duties of the member for whom he or she acts; and
  - (b) is entitled to be paid remuneration, sitting fees, travelling expenses or other expenses fixed by the Minister.

### **33. *Committees***

- (1) ACMI may—
    - (a) establish any committees it considers necessary and define the constitution and functions of each committee so established;
    - (b) determine the procedure of each committee;
    - (c) change the constitution or functions of a committee;
    - (d) dissolve a committee.
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- (2) The members of a committee established by ACMI must include at least one member of ACMI.
  - (3) A person may be a member of a committee established by ACMI even though he or she is not a member of ACMI.
  - (4) A member of a committee established by ACMI is entitled to receive any fees or travelling expenses or other expenses determined by ACMI.

**34. Chief Executive Officer**

- (1) There shall be a Chief Executive Officer of ACMI who, subject to and in accordance with the directions given to him or her by ACMI, shall have control of the day to day management of the affairs of ACMI.
- (2) The Chief Executive Officer shall be appointed by ACMI, with the approval of the Minister, for the term, not exceeding 5 years, that is specified in the instrument of appointment but is eligible for re-appointment.
- (3) The Chief Executive Officer holds office, subject to this Act, on the terms and conditions that are specified in the instrument of appointment.
- (4) ACMI must not remove the Chief Executive Officer from office except with the approval of the Minister.

**35. Other staff**

ACMI may employ any persons necessary for the performance of its functions.

**36. Schedule**

The Schedule applies to ACMI.



## **Division 2—Financial Provisions**

### **37. *Borrowing and investment powers***

ACMI has the powers conferred on it by the **Borrowing and Investment Powers Act 1987**.

### **38. *Account***

- (1) ACMI must establish and maintain in an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth approved for the purpose by the Treasurer an account in the name of ACMI into which is paid all money received by or paid to ACMI other than any money to which sub-section (3) applies.
  - (2) Money standing to the credit of ACMI in the account established under this section may be applied by ACMI only for or towards the costs and expenses of or incidental to the performance of the functions or the exercise of the powers of ACMI under this Act.
  - (3) This section does not apply to any money received or paid out by ACMI subject to and in accordance with the terms of a special trust.
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**PART 4—GENERAL**

**Division 1—Conflict of interest**

**39. Definitions**

In this Division—

**"body"** means Film Victoria or ACMI;

**"committee"** means a committee established by  
Film Victoria or ACMI;

**"member"** in section 40, means a member of  
Film Victoria or ACMI.

**40. Conflicts of interest—member**

(1) If—

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered by a body; and
- (b) the interest could conflict with the proper performance of the duties of the member in relation to the consideration of the matter—

the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest to the President of the body.

Penalty: 10 penalty units.

- (2) The President must cause the declaration to be tabled at the next meeting of the body and the person presiding at that meeting must cause the declaration to be recorded in the minutes of the meeting.

- (3) A member who has a conflict of interest in a matter—
  - (a) must not be present during any deliberations on the matter, unless the President directs otherwise; and
  - (b) is not entitled to vote on the matter.
- (4) If a member votes on a matter in contravention of sub-section (3)(b), the vote must be disallowed.
- (5) A member who has a conflict of interest in a matter must not be present during any deliberations leading to a direction, or take part in making a direction, under sub-section (3)(a).
- (6) For the purposes of this section, a member is not to be regarded as having a conflict of interest in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**41. *Conflicts of interest—committees***

- (1) If—
  - (a) a member of a committee has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the committee; and
  - (b) the interest could conflict with the proper performance of the duties of the member in relation to the consideration of the matter—

the member, as soon as practicable after becoming aware of the relevant facts, must declare the nature of the interest to the committee.

Penalty: 10 penalty units.

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- (2) The committee must cause the declaration to be tabled at the next meeting of the committee and the person presiding at that meeting must cause the declaration to be recorded in the minutes of the meeting.
  - (3) A member who has a conflict of interest in a matter—
    - (a) must not be present during any deliberations on the matter, unless the committee directs otherwise; and
    - (b) is not entitled to vote on the matter.
  - (4) If a member votes on a matter in contravention of sub-section (3)(b), the vote must be disallowed.
  - (5) A member who has a conflict of interest in a matter must not be present during any deliberations leading to a direction, or take part in making a direction, under sub-section (3)(a).
  - (6) For the purposes of this section, a member is not to be regarded as having a conflict of interest in a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**42. *Conflicts of interest—Chief Executive Officer and employees***

- (1) This section has effect where a person who is the Chief Executive Officer of a body or is an employee of a body is performing functions or services as Chief Executive Officer of the body or as employee of the body, as the case may be, and is required to consider a matter in which the person has a direct or indirect pecuniary or other interest that could involve a conflict with the proper performance or exercise by the person of those functions or services.
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- (2) In the case of the Chief Executive Officer of the body, the person must without delay give to the President of the body a written notice—
  - (a) stating that he or she is required to consider the matter and has an interest in it; and
  - (b) setting out particulars of the interest.
- (3) In the case of an employee of the body, the person must without delay give to the Chief Executive Officer of the body a written notice—
  - (a) stating that he or she is required to consider the matter and has an interest in it; and
  - (b) setting out particulars of the interest.
- (4) The person must do whatever is necessary to avoid the conflict referred to in sub-section (1).

### **Division 2—Regulations**

#### **43. Regulations**

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
  - (2) The regulations may impose penalties not exceeding 5 penalty units for a contravention of the regulations.
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**PART 5—TRANSITIONAL PROVISIONS**

**44. Definitions**

In this Part—

**"Corporation"** means Cinemedia Corporation established by the **Cinemedia Corporation Act 1997**;

**"former Corporation property"** means property, rights or liabilities of the Corporation that, under this Part, have vested in or become liabilities of, a new body;

**"instrument of the Corporation"** means an instrument subsisting immediately before the succession day—

- (a) to which the Corporation was a party;  
or
- (b) that was given to or in favour of the Corporation; or
- (c) that refers to the Corporation; or
- (d) under which—
  - (i) money is, or may become, payable to or by the Corporation; or
  - (ii) other property is to be, or may become liable to be, transferred to or by the Corporation;

**"liabilities"** means all liabilities, duties and obligations, whether actual, contingent or prospective;

**"new body"** means Film Victoria or ACMI;

**"property"** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description;

**"rights"** means all rights, powers, privileges and immunities, whether actual, contingent or prospective;

**"transfer Order"** means an order under section 45;

**"transferred employee"** means an employee transferred to a new body under this Part;

**"succession day"** means the day on which sections 5 and 21 come into operation.

**45. *Transfer Order***

The Minister must, before the succession day, by Order published in the Government Gazette—

- (a) allocate to Film Victoria such of the property, rights and liabilities of the Corporation as are specified in the Order; or
- (b) allocate to ACMI such of the property, rights and liabilities of the Corporation as are specified in the Order.

**46. *Film Victoria and ACMI to be successors in law of Corporation***

On the succession day—

- (a) the Corporation is dissolved; and
  - (b) all property and rights of the Corporation specified in a transfer Order vest in the new body specified in the Order; and
  - (c) all liabilities of the Corporation specified in a transfer Order become liabilities of the new body specified in the Order; and
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- (d) the new body specified in a transfer Order becomes the successor in law of the Corporation in relation to the property, rights and liabilities specified in the Order.

**47. *Substitution of party to agreement***

If, under section 46, the rights and liabilities of the Corporation under an agreement vest in, or become liabilities of, a new body—

- (a) the new body becomes, on the succession day, a party to the agreement in place of the Corporation; and
- (b) on and after the succession day, the agreement has effect as if the new body had always been a party to the agreement.

**48. *Proceedings***

If, immediately before the succession day, proceedings relating to former Corporation property (including arbitration proceedings) to which the Corporation was a party were pending or existing in any court or tribunal, then, on and after the succession day, the new body specified in the relevant transfer Order is substituted for the Corporation as a party to the proceedings and has the same rights in the proceedings as the Corporation had.

**49. *Interests in land***

Without prejudice to the generality of this Part and despite anything to the contrary in any other Act or law, if immediately before the succession day, the Corporation was, in relation to former Corporation property, the registered proprietor of an interest in land under the **Transfer of Land Act 1958**, then on and after that day—

- (a) the new body specified in the relevant transfer Order is to be taken to be the
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registered proprietor of that interest in land;  
and

- (b) the new body specified in the relevant transfer Order has the same rights and remedies in respect of that interest as the Corporation had.

**50. *Instrument of the Corporation***

Each instrument of the Corporation relating to property, rights and liabilities of the Corporation that, under this Part, have vested in, or become liabilities of, a new body has effect and continues to have effect according to its tenor on and after the succession day as if a reference in the instrument to the Corporation were a reference to the new body specified in the relevant transfer Order.

**51. *Amendment of the Register***

The Registrar of Titles, on being requested to do so and on delivery of any relevant certificate of title or instrument, must make any amendments in the Register that are necessary because of the operation of this Part.

**52. *Taxes***

No duty or other tax is chargeable under any Act in respect of anything effected by or done under this Part or in respect of any act or transaction connected with or necessary to be done by reason of this Part, including a transaction entered into or an instrument made, executed, lodged or given.

**53. *Evidence***

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- (1) Documentary or other evidence that would have been admissible for or against the interests of the Corporation if section 46 had not been enacted, is admissible for or against the interests of the new body specified in the relevant transfer Order.
- (2) Division 3A of Part III of the **Evidence Act 1958** continues to apply with respect to the books of account of the Corporation and to entries made in those books of account before the succession day, whether or not they relate to former Corporation property.
- (3) In sub-section (2), "**books of account**" has the same meaning as in Division 3A of Part III of the **Evidence Act 1958**.

**54. List of staff**

- (1) Before the succession day, the Minister must prepare a list of employees of the Corporation who are to become employees of a new body on that day.
- (2) The list may specify the employees—
  - (a) by name or position; or
  - (b) by class or category; or
  - (c) by any combination of paragraphs (a) and (b).
- (3) The list must specify the new body which on the succession day is to become the employer of each employee specified on the list.
- (4) Nothing in this section prevents a person specified on a list as an employee of the Corporation from resigning or being dismissed at any time before the succession day in accordance with the terms and conditions of his or her employment.

**55. *Transfer of staff***

- (1) A person listed as an employee of the Corporation in a list prepared under section 54 who was such an employee immediately before the succession day is to be regarded as—
    - (a) having been employed by the new body specified in the list with effect from the succession day; and
    - (b) having been so employed on the same terms and conditions as those that applied to the person, immediately before the succession day, as an employee of the Corporation; and
    - (c) having accrued an entitlement to benefits, in connection with that employment with the new body, that is equivalent to the entitlement that the person had accrued, as an employee of the Corporation immediately before the succession day.
  - (2) The service of a transferred employee as an employee of the new body is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the succession day, as an employee of the Corporation.
  - (3) If a transferred employee was, immediately before the succession day, an officer within the meaning of the **State Superannuation Act 1988** or a corresponding previous enactment, he or she continues, subject to that Act, to be an officer within the meaning of that Act while serving with the new body.
  - (4) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the Corporation because of this Part.
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- (5) A certificate purporting to be signed by the chief executive officer of the new body certifying that a person named in the certificate was, with effect from the succession day, employed, by virtue of this section, by the new body named in the certificate is admissible in evidence in any proceedings and is conclusive proof of the matters stated in it.

**56. *Future terms and conditions of transferred employees***

Nothing in section 55 prevents—

- (a) any of the terms and conditions of employment of a transferred employee from being altered by or under any law, award or agreement with effect from any time after the succession day; or
- (b) a transferred employee from resigning, or the termination of a transferred employee's employment, at any time after the succession day in accordance with the then existing terms and conditions of his or her employment by the new body.

**57. *Validity of things done under this Part***

Nothing effected by this Part or suffered under this Part—

- (a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any of them guilty of a civil offence; or
  - (b) is subject to compliance with or is to be regarded as placing any person in breach of or as constituting a default under any Act or other law or any provision in any agreement, arrangement or understanding including, without limiting the generality of the foregoing, any provision prohibiting,
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- restricting or regulating the assignment or transfer of any property or right or the disclosure of any information; or
- (c) is to be regarded as fulfilling any condition which allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or
  - (d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any property, right or liability; or
  - (e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or
  - (f) is to be regarded as frustrating any contract; or
  - (g) releases any surety or other obligor wholly or in part from any obligation.
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**PART 6—CONSEQUENTIAL AMENDMENTS**

**58. *Repeal of Cinemedia Corporation Act 1997***

The **Cinemedia Corporation Act 1997** is repealed.

**59. *Amendment to the Borrowing and Investment Powers Act 1987***

In Schedule 1 to the **Borrowing and Investment Powers Act 1987**—

(a) for item 1AA, **substitute**—

"1AA. Australian Centre 5, 8, 11, 13, 20,  
for the Moving 20A, 21";  
Image

(b) after item 3, **insert**—

"4. Film Victoria 5, 8, 11, 13, 20,  
20A, 21".

**60. *Amendment to the Corporations (Consequential Amendments) Act 2001***

In the Schedule to the **Corporations (Consequential Amendments) Act 2001**, item 16 is repealed.

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## SCHEDULE

### COMMON PROVISIONS APPLYING TO FILM VICTORIA AND ACMI

#### 1. *Definition*

In this Schedule, "**body**" means Film Victoria or ACMI.

#### 2. *Terms and conditions of appointment of members*

- (1) Each member must be appointed for the term, not exceeding 3 years, that is fixed by the Governor in Council in the instrument of his or her appointment but subject to sub-clause (2) is eligible for re-appointment.
  - (2) A person who has been a member for 9 consecutive years ceases to hold office and is not eligible for re-appointment unless—
    - (a) the person is, or immediately before the expiry of the ninth consecutive year the person was, the President of the body; or
    - (b) a period of 3 years or more has elapsed since the person last was a member.
  - (3) The Governor in Council may in the instrument of appointment of a member specify the terms and conditions of appointment.
  - (4) The Governor in Council may at any time remove a member from office.
  - (5) The office of a member becomes vacant—
    - (a) at the expiration of the member's term of office;
    - (b) if the member dies;
    - (c) if the member resigns his or her office by writing addressed to the Minister;
    - (d) if the member is removed from office in accordance with sub-clause (4).
    - (e) if the member becomes an insolvent under administration within the meaning of the Corporations Act;
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- (f) if the member becomes incapable of performing his or her duties;
  - (g) if the member is wilfully absent from 3 consecutive meetings of the body without leave granted by the President;
  - (h) if the member is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence.
- (6) Where any leave granted to a member by the President of the body exceeds 3 consecutive meetings the President must notify the Minister of the granting of leave.
- (7) The **Public Sector Management and Employment Act 1998** does not apply to a member in respect of the office of member.
- (8) A member is entitled to be paid any remuneration, sitting fee, travelling allowances or other allowances fixed from time to time by the Governor in Council.
- (9) A member must in the exercise of his or her functions—
- (a) act honestly; and
  - (b) exercise reasonable care and diligence; and
  - (c) not make improper use of any information acquired as a member.

**3. Procedure at meetings of the body**

- (1) The body must meet at such times and places as are fixed by the President and must hold at least six meetings in each year.
- (2) The President or, in his or her absence, a member elected by the members present, must preside at a meeting of the body.
- (3) A majority of the members for the time being constitutes a quorum.
- (4) Subject to the presence of a quorum, the body may act despite a vacancy in its membership.



- (5) A question arising at a meeting of the body must be determined by a majority of the votes of the members present and voting and in the event of an equality of votes the person presiding has an additional or casting vote.
- (6) The body must ensure that minutes are kept of each meeting.
- (7) An act or decision of the body is not invalid by reason only of a defect or irregularity in or in connection with the appointment of a member.
- (8) Subject to this Act, the body may regulate its own proceedings.

**4. Resolutions without meetings**

- (1) If—
  - (a) the body has taken reasonable steps to give notice to each member setting out the terms of a proposed resolution; and
  - (b) a majority of the members for the time being sign a document containing a statement that they are in favour of the resolution in the terms set out in the document—

a resolution in those terms is deemed to have been passed at a meeting of the body held on the day on which the document is signed or, if the members referred to in paragraph (b) do not sign it on the same day, on the day on which the last of those members signs the document.

- (2) For the purposes of sub-clause (1), two or more separate documents containing a statement in identical terms, each of which is signed by one or more members, are deemed to constitute one document.
  - (3) If a resolution is, under sub-clause (1), deemed to have been passed at a meeting of the body, each member must as soon as practicable be advised of the matter and given a copy of the resolution.
  - (4) The majority of members referred to in sub-clause (1)(b) must not include a member who, because of a conflict of interest, is not entitled to vote on the resolution.
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**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 1 November 2001*

*Legislative Council: 27 November 2001*

The long title for the Bill for this Act was "to establish Film Victoria and the Australian Centre for the Moving Image, to repeal the **Cinemia Corporation Act 1997** and for other purposes."