



Screen Australia (Transfer of Assets) Act 2011

No. 20, 2011

**An Act to change the name of the National Film
and Sound Archive and to transfer certain assets
and liabilities of Screen Australia to the National
Film and Sound Archive, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to change the name of the National Film
and Sound Archive and to transfer certain assets
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Film and Sound Archive, and for related purposes**

[Assented to 12 April 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Screen Australia (Transfer of Assets) Act 2011*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	13 April 2011
2. Schedule 1, items 1, 2 and 3	1 July 2011.	1 July 2011
3. Schedule 1, items 4, 5, 6 and 7	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2011
4. Schedule 1, item 8	1 July 2011.	1 July 2011
5. Schedule 1, items 9, 10, 11 and 12	Immediately after the commencement of the provision(s) covered by table item 4.	1 July 2011
6. Schedule 2	The day after this Act receives the Royal Assent.	13 April 2011

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Extended geographic application of this Act

- (1) This Act extends to every external Territory.
- (2) This Act applies both within and outside Australia.

Schedule 1—Name change

Freedom of Information Act 1982

1 Paragraph 13(1)(e)

Omit “*National Film and Sound Archive Act 2008*”, substitute “*National Film and Sound Archive of Australia Act 2008*”.

2 Paragraph 13(1)(e)

Omit “National Film and Sound Archive”, substitute “National Film and Sound Archive of Australia”.

National Film and Sound Archive Act 2008

3 Bulk amendments

The *National Film and Sound Archive Act 2008* is amended as follows:

- (a) by omitting “National Film and Sound Archive” (wherever occurring) and substituting “National Film and Sound Archive of Australia”;
- (b) by omitting “National Film and Sound Archive’s” (wherever occurring) and substituting “National Film and Sound Archive of Australia’s”.

Note: The headings to sections and subsections of the *National Film and Sound Archive Act 2008* are altered as follows:

- (a) by omitting “**National Film and Sound Archive**” (wherever occurring) and substituting “**National Film and Sound Archive of Australia**”;
- (b) by omitting “*National Film and Sound Archive*” (wherever occurring) and substituting “*National Film and Sound Archive of Australia*”.

4 Title

Omit “**National Film and Sound Archive**”, substitute “**National Film and Sound Archive of Australia**”.

5 Section 1

Omit “*National Film and Sound Archive Act 2008*”, substitute “*National Film and Sound Archive of Australia Act 2008*”.

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act's previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

6 Part 2 (heading)

Repeal the heading, substitute:

Part 2—National Film and Sound Archive of Australia

7 Part 3 (heading)

Repeal the heading, substitute:

Part 3—The Board of the National Film and Sound Archive of Australia

Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008

8 Bulk amendments

The *Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008* is amended as follows:

- (a) by omitting “National Film and Sound Archive” (wherever occurring) and substituting “National Film and Sound Archive of Australia”;
- (b) by omitting “*National Film and Sound Archive*” (wherever occurring) and substituting “*National Film and Sound Archive of Australia*”;
- (c) by omitting “NFSA” (wherever occurring) and substituting “NFSAA”.

Note: The headings to items and subitems of the *Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008* are altered as follows:

- (a) by omitting “**National Film and Sound Archive**” and substituting “**National Film and Sound Archive of Australia**”;

Schedule 1 Name change

- (b) by omitting “*NFSA*” (wherever occurring) and substituting “*NFSAA*”;
- (c) by omitting “**NFSA**” (wherever occurring) and substituting “**NFSAA**”.

9 Title

Omit “*National Film and Sound Archive Act 2008*”, substitute “*National Film and Sound Archive of Australia Act 2008*”.

10 Item 1 of Schedule 2 (definition of *NFSA*)

Repeal the definition.

11 Item 1 of Schedule 2

Insert:

NFSAA means the National Film and Sound Archive of Australia established by subsection 5(1) of the *National Film and Sound Archive of Australia Act 2008*.

12 Part 7 of Schedule 2 (heading)

Repeal the heading, substitute:

**Part 7—Appointment of first CEO of Screen
Australia and NFSAA**

Schedule 2—Screen Australia

Part 1—Certain assets and liabilities of Screen Australia transferred to NFSAA

1 Definitions

In this Schedule:

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

FAL has the same meaning as in Schedule 2 to the *Screen Australia and the National Film and Sound Archive of Australia (Consequential and Transitional Provisions) Act 2008*.

film library means the library of films and associated materials that were previously owned by FAL and became assets and liabilities of Screen Australia as a result of subitem 3(2) of Schedule 2 to the *Screen Australia and the National Film and Sound Archive of Australia (Consequential and Transitional Provisions) Act 2008*.

film library asset means an asset connected with the film library, including:

- (a) assets relating to the sale and licensing of materials within the library; and
- (b) assets relating to the use of materials within the library for digital learning purposes.

film library liability means a liability connected with the film library, including:

- (a) liabilities relating to the sale and licensing of materials within the library; and
- (b) liabilities relating to the use of materials within the library for digital learning purposes.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

NFSAA means the National Film and Sound Archive of Australia mentioned in subsection 5(1) of the *National Film and Sound Archive of Australia Act 2008*.

Screen Australia means Screen Australia established by subsection 5(1) of the *Screen Australia Act 2008*.

transition time means the start of 1 July 2011.

2 Film library assets and film library liabilities of Screen Australia become assets and liabilities of NFSAA

- (1) This item applies to assets and liabilities of Screen Australia immediately before the transition time.
- (2) Subject to this item, at the transition time, all film library assets and film library liabilities cease to be assets and liabilities of Screen Australia and become assets and liabilities of NFSAA without any conveyance, transfer or assignment. NFSAA becomes the successor in law in relation to the film library assets and film library liabilities.
- (3) Before the transition time, the Minister may determine, in writing, that specified assets or liabilities of Screen Australia (other than film library assets or film library liabilities) that are related to or connected with the film library, are to become assets or liabilities of NFSAA.
- (4) If the Minister makes a determination under subitem (3) that specified assets or liabilities of Screen Australia (other than film library assets or film library liabilities) are to become the assets or liabilities of NFSAA, then, at the transition time, the specified assets or liabilities cease to be assets or liabilities of Screen Australia and become assets or liabilities of NFSAA without any conveyance, transfer or assignment. NFSAA becomes the successor in law in relation to those assets or liabilities.
- (5) Before the transition time, the Minister may determine, in writing, that despite subitem (2), specified film library assets or film library liabilities of Screen Australia:
 - (a) continue to be assets or liabilities of Screen Australia; and
 - (b) do not become assets or liabilities of NFSAA.
- (6) A determination under subitem (5) has effect accordingly.
- (7) A determination made under subitem (3) or (5) is not a legislative instrument.

- (8) If a film library asset or other asset that has become an asset of NFSAA under this item was, immediately before the transition time, held by Screen Australia on trust, that asset is taken, at and after the transition time, to be held by NFSAA on trust and subject to the terms of the trust on which the asset was so held by Screen Australia.

3 Certificates for vesting of assets

- (1) This item applies if:
- (a) a film library asset or other asset becomes an asset of NFSAA under item 2; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in NFSAA under this Act.
- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register in relation to assets of that kind as are necessary, having regard to the effect of this Part.
- (3) A certificate made under subitem (1) is not a legislative instrument.
- (4) In this item:
assets official means the person or authority who, under a law of the Commonwealth, a State or a Territory, or under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

4 Certificates taken to be authentic

- A document that appears to be a certificate made under subitem 3(1):
- (a) is taken to be such a certificate; and
 - (b) is taken to have been properly given;
- unless the contrary is established.

5 Exemption from stamp duty and other State or Territory taxes

Schedule 2 Screen Australia

Part 1 Certain assets and liabilities of Screen Australia transferred to NFSAA

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
 - (a) the vesting of a film library asset or film library liability under subitem 2(2); or
 - (b) the vesting of an asset or liability under subitem 2(4); or
 - (c) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing is connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.
- (5) A certificate made under subitem (3) is not a legislative instrument.

Part 2—Staff of Screen Australia

6 Non-APS employees of Screen Australia transferred to NFSAA as APS employees

- (1) This item applies to a person who:
- (a) is an officer appointed, or employee engaged, by Screen Australia under subsection 31(2) of the *Screen Australia Act 2008* immediately before the transition time; and
 - (b) is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become a member of the staff of NFSAA engaged under the *Public Service Act 1999*.

Annual leave and personal/carer's leave

- (2) The person is taken to have accrued an entitlement to annual leave and personal/carer's leave in connection with becoming a member of the staff of NFSAA engaged under the *Public Service Act 1999* that is equivalent to the entitlement that the person had as an officer or employee of Screen Australia immediately before the transition time.

Unpaid parental leave

- (3) The service of the person as a member of the staff of NFSAA engaged under the *Public Service Act 1999* is taken, for the purpose of Division 5 of Part 2-2 of the *Fair Work Act 2009*, to have been continuous with his or her service as an officer or employee of Screen Australia.

Continuous service

- (4) The service of the person as a member of the staff of NFSAA engaged under the *Public Service Act 1999* is taken, for all purposes, to have been continuous with his or her service as an officer or employee of Screen Australia.

7 No transfer of business

Schedule 2 Screen Australia
Part 2 Staff of Screen Australia

Nothing in this Schedule produces the result that a transfer of business has occurred for the purposes of the *Fair Work Act 2009*.

Part 3—Things done by, references in instruments to, legal proceedings of and records or documents of Screen Australia

8 Things done by, or in relation to, Screen Australia

- (1) This item applies to a thing done by, or in relation to, Screen Australia before the transition time in respect of a film library asset or a film library liability (or any other asset or liability) of Screen Australia that, as a result of the operation of item 2, becomes an asset or liability of NFSAA.
- (2) The Minister may determine, in writing, that the thing is taken, at and after the transition time, to have been done by, or in relation to, NFSAA.
- (3) A determination made under subitem (2) has effect accordingly.
- (4) The Minister may make a determination under subitem (2) before or after the transition time.
- (5) A determination made under subitem (2) is not a legislative instrument.
- (6) This item does not limit the operation of item 2.

9 References in instruments to Screen Australia

- (1) This item applies to an instrument that:
 - (a) is in force immediately before the transition time; and
 - (b) contains a reference to Screen Australia.
- (2) If the instrument relates to:
 - (a) a film library asset or a film library liability (or any other asset or liability) of Screen Australia that, as a result of the operation of item 2, becomes an asset or liability of NFSAA;
or
 - (b) a thing done by, or in relation to, Screen Australia, that, as a result of the operation of item 8, is taken to have been done by, or in relation to, NFSAA;

Schedule 2 Screen Australia

Part 3 Things done by, references in instruments to, legal proceedings of and records or documents of Screen Australia

then the reference to Screen Australia has effect, at and after the transition time, as if it were a reference to NFSAA.

- (3) If subitem (2) does not apply to the instrument, then the Minister may determine, in writing, that the reference to Screen Australia has effect, at and after the transition time, as if it were a reference to NFSAA.
- (4) A determination made under subitem (3) has effect accordingly.
- (5) The Minister may make a determination under subitem (3) before or after the transition time.
- (6) A determination made under subitem (3) is not a legislative instrument.
- (7) In this item:
instrument:
 - (a) includes:
 - (i) a contract, deed, undertaking or agreement; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; but
 - (b) does not include:
 - (i) an Act; or
 - (ii) instruments made under this Act.

10 Legal proceedings of Screen Australia

- (1) This item applies to any proceedings:
 - (a) that were pending in any court or tribunal immediately before the transition time; and
 - (b) to which Screen Australia was a party.
 - (2) If the proceedings related, in whole or part, to a film library asset or a film library liability (or any other asset or liability) that, as a result of the operation of item 2, becomes an asset or liability of NFSAA, then NFSAA is taken, at and after the transition time, to be substituted for Screen Australia as a party to the proceedings in respect of that film library asset or film library liability (or other asset or liability).
 - (3) If subitem (2) does not apply to the proceedings (but the proceedings relate to the operation of this Schedule), then the Minister may determine, in writing, that NFSAA is taken, at and after the transition
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time, to be substituted for Screen Australia as a party to the proceedings.

- (4) A determination made under subitem (3) has effect accordingly.
- (5) The Minister may make a determination under subitem (3) before or after the transition time.
- (6) A determination made under subitem (3) is not a legislative instrument.

11 Transfer of custody of records or documents of Screen Australia

- (1) This item applies to a record or document that, immediately before the transition time, is in the custody of Screen Australia.
- (2) If the record or document relates to:
 - (a) a film library asset or a film library liability (or any other asset or liability) of Screen Australia that, as a result of the operation of item 2, becomes an asset or liability of NFSAA; or
 - (b) a thing done by, or in relation to, Screen Australia, that, as a result of the operation of item 8, is taken to have been done by, or in relation to, NFSAA;

then, after the transition time, the record or document is to be transferred into the custody of NFSAA.

- (3) If subitem (2) does not apply to the record or document (but the record or document relates to the operation of this Schedule), then the Minister may determine, in writing, that the record or document is to be transferred after the transition time into the custody of NFSAA.
- (4) A determination made under subitem (3) has effect accordingly.
- (5) The Minister may make a determination under subitem (3) before or after the transition time.
- (6) A determination made under subitem (3) is not a legislative instrument.
- (7) Section 20 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to accounting records transferred to a body under this item as if the records were records of that body.

12 Variation of the operation of this Part

Schedule 2 Screen Australia

Part 3 Things done by, references in instruments to, legal proceedings of and records or documents of Screen Australia

- (1) The Minister may determine, in writing, that a provision of item 9, 10 or 11 does not apply in relation to instruments, proceedings, records or documents specified in the determination.
- (2) A determination made under subitem (1) has effect accordingly, and takes effect:
 - (a) at the time specified in the determination (which may be a time before the determination is made but not a time earlier than the transition time); or
 - (b) if a time is not specified—at the beginning of the day on which the determination is made.
- (3) A determination made under subitem (1) is not a legislative instrument.

Part 4—Other matters

13 Transfer of appropriated money

- (1) For the purposes of the operation of an Appropriation Act after the transition time, the Finance Minister may determine, by legislative instrument, that one part of an amount referred to in that Act that relates to Screen Australia is to be read as an amount that relates to NFSAA. The determination must be related to the operation of this Schedule.
- (2) A determination made under subitem (1) has effect accordingly.
- (3) A determination made under subitem (1) cannot result in a change in the total amount appropriated.
- (4) A determination made under subitem (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies to the determination.
- (5) In this item:
Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.
Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

14 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

15 Delegation by Minister

- (1) The Minister may delegate, in writing, all or any of his or her powers and functions under this Act to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

16 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the employment, at or after the transition time, by NFSAA, of a person appointed, engaged or employed, immediately before the transition time, by Screen Australia; or
 - (c) leave of employees or staff of Screen Australia approved before the transition time.

17 References in this Schedule

- (1) To avoid doubt, prior to 1 July 2011 this Schedule applies as if references in this Schedule to the National Film and Sound Archive of Australia were references to the National Film and Sound Archive.
 - (2) To avoid doubt, prior to 1 July 2011 this Schedule applies as if references in this Schedule to the *National Film and Sound Archive of Australia Act 2008* were references to the *National Film and Sound Archive Act 2008*.
 - (3) To avoid doubt, prior to 1 July 2011 this Schedule applies as if references in this Schedule to the *Screen Australia and the National Film and Sound Archive of Australia (Consequential and Transitional Provisions) Act 2008* were references to the *Screen Australia and the*
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National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008.

[Minister's second reading speech made in—
House of Representatives on 17 November 2010
Senate on 28 February 2011]