



National Portrait Gallery of Australia Act 2012

No. 148, 2012

**An Act to establish the National Portrait Gallery of
Australia, and for related purposes**

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

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No. 148, 2012

**An Act to establish the National Portrait Gallery of
Australia, and for related purposes**

[Assented to 6 November 2012]

The Parliament of Australia enacts:

National Portrait Gallery of Australia Act 2012 No. 148, 2012 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Portrait Gallery of Australia Act 2012*.

2 Commencement

This Act commences on 1 July 2013.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act establishes the National Portrait Gallery of Australia.
- The Gallery has functions relating to keeping a national collection of portraits, other works of art and related material.
- There is to be a Board and a Director of the Gallery.

4 Definitions

In this Act:

Board means the Board of the National Portrait Gallery of Australia.

Board member means a member of the Board, and includes the Chair and Deputy Chair.

Chair means the Chair of the Board.

Deputy Chair means the Deputy Chair of the Board.

Director means the Director of the National Portrait Gallery of Australia.

Gallery means the National Portrait Gallery of Australia established by this Act.

national collection means the national collection referred to in paragraph 7(1)(a).

5 Extended geographic application of this Act

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

Part 2—The National Portrait Gallery of Australia

6 Establishment

- (1) The National Portrait Gallery of Australia is established by this section.
 - (2) The Gallery:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.
- Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Gallery. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.
- (3) The Gallery's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

7 Functions

- (1) The functions of the Gallery are to:
 - (a) develop, preserve, maintain, promote and provide access to a national collection consisting of:
 - (i) portraits (including portraits that reflect the identity, history, diversity and culture of Australia); and
 - (ii) other works of art; and
 - (iii) related material; and
 - (b) develop and engage a national audience in relation to:
 - (i) that collection; and
 - (ii) other portraits, works of art and related material that are, or that will be, in the possession of the Gallery; including through exhibitions, education, research, publications and public and online programs.

- (2) In performing its functions, the Gallery is, as far as practical, to:
- (a) use every endeavour to make the most advantageous use of the national collection in the national interest; and
 - (b) promote the efficient, effective, economical and ethical use of public resources.

Fees

- (3) The Gallery may charge fees for things done in performing its functions or for other services provided by the Gallery.
- (4) A fee must not be such as to amount to taxation.

8 Powers

- (1) The Gallery has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The Gallery's powers include, but are not limited to, the following powers:
- (a) the power to enter into contracts;
 - (b) the power to occupy, use and control any land, building, structure or other improvement made available to the Gallery under section 9;
 - (c) the power to purchase or take on hire, to commission or produce, or to accept as a gift or on deposit or loan, portraits, other works of art or related material;
 - (d) the power to make available (whether by hire, loan or otherwise) portraits, other works of art or related material;
 - (e) the power to provide financial assistance to persons (whether by way of loan, grant, award or otherwise and whether on commercial terms or otherwise);
 - (f) the power to accept gifts, devises, bequests and assignments (whether on trust or otherwise);
 - (g) the power to act as trustee of money or other property vested in the Gallery on trust;
 - (h) the power to do anything incidental to any of its functions.
- (3) Despite anything contained in this Act, any money or other property held by the Gallery on trust must be dealt with in

Section 9

accordance with the obligations of the Gallery as trustee of the trust.

9 Land etc. for the Gallery

- (1) The Minister may, by notice published in the *Gazette*, make available to the Gallery for the purposes of the Gallery:
 - (a) such land owned by the Commonwealth as is specified in the notice; and
 - (b) if there are buildings, structures or other improvements owned by the Commonwealth on that land—such of those buildings, structures or other improvements as are specified in the notice.
- (2) Subsection (1) has effect despite anything contained in the *Lands Acquisition Act 1989*.
- (3) A notice under subsection (1) is not a legislative instrument.

10 Transfer of works of art and related material

At the request of the Board, the Minister may transfer or cause to be transferred to the Gallery, for inclusion in the national collection, portraits, other works of art or related material owned by the Commonwealth.

11 Disposal of works of art and related material

- (1) The Board may resolve that a portrait, another work of art or related material in the national collection be disposed of by sale, exchange, gift or destruction if the Board is satisfied that the portrait, other work of art or related material:
 - (a) is unfit for that collection; or
 - (b) is not required as part of that collection.
- (2) However, the Board must not resolve that a portrait, another work of art or related material be disposed of by way of destruction unless the Board is satisfied that the portrait, other work of art or related material has no saleable value.

- (3) If the Board has resolved, in accordance with this section, that a portrait, another work of art or related material be disposed of, the Gallery may dispose of that portrait, other work of art or related material accordingly.
- (4) Subsection (3) is subject to section 47 (about restrictions on financial transactions).

12 Gallery does not have privileges and immunities of the Crown

The Gallery does not have the privileges and immunities of the Crown in right of the Commonwealth.

Part 3—The Board of the National Portrait Gallery of Australia

Division 1—The Board

13 Establishment

The Board of the National Portrait Gallery of Australia is established by this section.

14 Role

- (1) The Board is responsible for ensuring the proper and efficient performance of the Gallery's functions.
- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its duties.
- (3) Anything done in the name of, or on behalf of, the Gallery by the Board, or with the authority of the Board, is taken to have been done by the Gallery.
- (4) If a function or power of the Gallery is dependent on the opinion, belief or state of mind of the Gallery in relation to a matter, the function or power may be performed or exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

15 Membership

The Board consists of the following members:

- (a) the Chair of the Board;
- (b) the Deputy Chair of the Board;
- (c) not fewer than 3, and not more than 7, other members.

16 Appointment of Board members

- (1) The Board members are to be appointed by the Minister by written instrument.
- (2) A person must not be appointed as a Board member unless the Minister is satisfied that the person has knowledge or experience relevant to the affairs of the Gallery.
- (3) A Board member holds office on a part-time basis.
- (4) A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.
- (5) A person must not be appointed as a Board member for a period if the sum of the following exceeds 9 years:
 - (a) that period;
 - (b) any periods of previous appointment of the person as a Board member.
- (6) The performance of the functions, or the exercise of the powers, of the Board is not affected by reason only of the number of Board members falling below 5 (but not below 3) for a period of not more than 12 months.

17 Acting Board members

Acting by operation of law

- (1) The Deputy Chair is to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Chair, see section 33A of the *Acts Interpretation Act 1901*.

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Acting appointments

- (2) The Minister may, by written instrument, appoint a Board member to act as the Deputy Chair:
- (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair:
 - (i) is acting as the Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (3) The Minister may, by written instrument, appoint a person to act as a Board member (other than the Chair or Deputy Chair):
- (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a Board member:
 - (i) is acting as the Deputy Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

18 Remuneration

- (1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is prescribed by the regulations.
- (2) A Board member is to be paid the allowances that are prescribed by the regulations.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

19 Leave of absence

- (1) The Minister may grant the Chair leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants to a Board member leave of absence for a period that exceeds 4 months.

20 Resignation

- (1) A Board member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

21 Termination of appointment

- (1) The Minister may terminate the appointment of a Board member:
 - (a) for misbehaviour; or
 - (b) if the Board member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of a Board member if:
 - (a) the Board member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

Part 3 The Board of the National Portrait Gallery of Australia

Division 1 The Board

Section 22

- (b) the Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
- (c) the Board member fails, without reasonable excuse, to comply with an obligation imposed on him or her by section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*.

22 Other terms and conditions

A Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 2—Procedures of the Board

23 Convening of meetings

- (1) The Chair must convene such meetings of the Board as are, in his or her opinion, necessary for the efficient conduct of its affairs.
- (2) The Chair must convene at least 2 meetings of the Board each calendar year.
- (3) The Chair must convene a meeting of the Board if directed to do so by the Minister.
- (4) The Chair must, on receipt of a written request signed by a majority of the current Board members, convene a meeting of the Board.

24 Quorum

- (1) The quorum for a meeting of the Board is a majority of the current Board members.
- (2) However, if:
 - (a) a Board member is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;then those remaining Board members constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.

25 Presiding at meetings

- (1) The Chair must preside at all meetings of the Board at which he or she is present.

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- (2) If the Chair is not present at a meeting of the Board, the Deputy Chair, if present, must preside at the meeting.
- (3) If neither the Chair nor the Deputy Chair is present at a meeting of the Board, the Board members present must elect one of their number to preside at the meeting.

26 Voting at meetings

- (1) At a meeting of the Board, a question is decided by a majority of the votes of Board members present and voting.
- (2) The Board member presiding at the meeting has:
 - (a) a deliberative vote; and
 - (b) in the event of an equality of votes, a casting vote.

27 Minutes

The Board must keep minutes of its meetings.

28 Conduct of meetings

Subject to this Act and the *Commonwealth Authorities and Companies Act 1997*, the Board may regulate the conduct of its meetings as it thinks fit.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Board members may participate in meetings.

29 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the current Board members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the current Board members were informed of the proposed decision, or reasonable efforts were made to inform all the current Board members of the proposed decision.

- (2) Subsection (1) does not apply unless the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

Part 4—Director, staff and consultants

Division 1—Director

30 Establishment

There is to be a Director of the National Portrait Gallery of Australia.

31 Role

- (1) The Director is responsible for the day-to-day administration of the Gallery.
- (2) The Director has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

Board policies and directions

- (3) The Director is to act in accordance with any policies determined, and any directions given, by the Board.
- (4) Subsection (3) does not apply in relation to the Director's performance of functions, or exercise of powers, under the *Public Service Act 1999*.
- (5) If a policy or direction under subsection (3) is in writing, the policy or direction is not a legislative instrument.

32 Appointment of Director

- (1) The Director is to be appointed:
 - (a) in the case of the first appointment of the Director—by the Minister; or
 - (b) otherwise—by the Board.
- (2) However, the Board must not appoint a person as the Director unless the Minister agrees in writing to the appointment.

- (3) An appointment is to be made by written instrument.
- (4) The Director holds office on a full-time basis.
- (5) The Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.
- (6) The Director must not be a Board member.

33 Acting appointments

- (1) The Board may, by written instrument, appoint a person to act as the Director:
 - (a) during a vacancy in the office of the Director (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Director:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.
- (2) However, the Board must not appoint a person to act as the Director unless the Minister agrees in writing to the appointment.

34 Other employment

- (1) The Director must not engage in paid employment outside the duties of the Director's office without the Chair's approval.
- (2) The Chair must notify the Minister of any approval given under subsection (1).

35 Remuneration

- (1) The Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director is to be paid the remuneration that is prescribed by the regulations.
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- (2) The Director is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

36 Leave

- (1) The Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chair may grant the Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (3) The Chair must consult the Minister before granting the Director leave of absence for a period that exceeds 1 month.

37 Disclosure of interests

The Director must give written notice to the Minister and the Board of all material personal interests that the Director has or acquires and that conflict or could conflict with the proper performance of the Director's duties.

38 Resignation

- (1) The Director may resign his or her appointment by giving the Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Chair or, if a later day is specified in the resignation, on that later day.
- (3) If the Director resigns under this section, the Chair must notify the Minister of the resignation.

39 Termination of appointment

- (1) The Board may terminate the appointment of the Director:
 - (a) for misbehaviour; or

- (b) if the Director is unable to perform the duties of his or her office because of physical or mental incapacity; or
 - (c) if the Director:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (d) if the Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (e) if the Director engages, except with the Chair's approval, in paid employment outside the duties of his or her office (see section 34); or
 - (f) if the Director fails, without reasonable excuse, to comply with section 37.
- (2) However, the Board must not terminate the appointment of the Director unless the Minister agrees in writing to the termination.

40 Other terms and conditions

The Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

Division 2—Staff and consultants

41 Staff

- (1) The staff of the National Portrait Gallery of Australia must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director and the staff of the Gallery together constitute a Statutory Agency; and
 - (b) the Director is the Head of that Statutory Agency.

42 Services of other persons may be made available to the Gallery

- (1) The Gallery may arrange with an Agency Head (within the meaning of the *Public Service Act 1999*), or with a body established for a public purpose by a law of the Commonwealth, for the services of officers or employees of the Agency or body to be made available to the Gallery.
- (2) The Gallery may enter into an arrangement with the appropriate authority of a State or Territory for the services of officers or employees of the Public Service of the State or Territory, or of a State or Territory statutory authority, to be made available to the Gallery.

43 Consultants

The Gallery may engage consultants to assist in the performance of its functions.

Part 5—Planning

44 Corporate plan

- (1) The Board must prepare a corporate plan in writing for the Gallery at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
 - (a) a statement of the objectives that the Gallery will pursue;
 - (b) the strategies and policies that the Gallery will adopt to achieve those objectives;
 - (c) such other matters (if any) as the Minister requires.The plan may include other matters.
- (4) The Chair must keep the Minister informed about:
 - (a) changes to the plan; and
 - (b) matters that might significantly affect the achievement of the objectives set out in the plan.
- (5) The Minister may give the Chair written guidelines that are to be used by the Chair in deciding whether a matter is covered by paragraph (3)(c) or (4)(b).
- (6) A guideline under subsection (5) is not a legislative instrument.
- (7) The Board must ensure that the first corporate plan is prepared within 12 months after the commencement of this section.

Part 6—Finance

45 Money payable to the Gallery

- (1) There is payable to the Gallery such money as is appropriated by the Parliament for the purposes of the Gallery.
- (2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the Gallery.
- (3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.
- (4) In this section:

Finance Minister means the Minister administering the *Financial Management and Accountability Act 1997*.

46 Application of money by the Gallery

- (1) The money of the Gallery is to be applied only:
 - (a) in payment or discharge of the costs, expenses and other obligations incurred or undertaken by the Gallery in the performance of its functions and the exercise of its powers; and
 - (b) in payment of any remuneration or allowances payable under this Act.
- (2) Subsection (1) does not prevent investment of surplus money of the Gallery under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

47 Restrictions on financial transactions

- (1) The Gallery must not, without the written approval of the Minister:

- (a) acquire any property, right or privilege for a consideration exceeding in amount or value the amount prescribed by the regulations for the purposes of this paragraph; or
 - (b) dispose of any property, right or privilege if the amount or value of the consideration for the disposal, or the value of the property, right or privilege, exceeds the amount prescribed by the regulations for the purposes of this paragraph; or
 - (c) enter into a contract for the construction of a building for the Gallery, being a contract under which the Gallery is to pay an amount exceeding the amount prescribed by the regulations for the purposes of this paragraph; or
 - (d) enter into a lease of land for a period exceeding 10 years.
- (2) Paragraphs (1)(a) and (b) do not apply to the investment of surplus money of the Gallery under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
- (3) An approval under subsection (1) is not a legislative instrument.

48 Taxation

The Gallery is not subject to taxation under a law of the Commonwealth or of a State or Territory.

Note: However, the Gallery may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999* and section 66 of the *Fringe Benefits Tax Assessment Act 1986*).

Part 7—Other matters

49 Annual report

Each annual report on the Gallery under section 9 of the *Commonwealth Authorities and Companies Act 1997* must include particulars of:

- (a) any land, buildings, structures or other improvements made available to the Gallery under section 9 of this Act during the financial year to which the report relates; and
- (b) any disposals of portraits, other works of art or related material under section 11 of this Act during that financial year.

50 Ministerial directions

- (1) The Minister may, by legislative instrument, give directions to the Board:
 - (a) in relation to the performance of the functions, or the exercise of the powers, of the Gallery; or
 - (b) requiring the provision of a report or advice on a matter that relates to any of the Gallery's functions or powers.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) A direction of a kind covered by paragraph (1)(a) must be of a general nature only.
- (3) The Board must comply with a direction under subsection (1).

51 Delegation by the Minister

- (1) The Minister may, by writing, delegate any or all of his or her functions or powers under this Act to:
 - (a) the Secretary of the Department; or

- (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) However, subsection (1) does not apply to the Minister's functions or powers under section 9, 16, 17, 21, 32, 39 or 50.
- (3) In performing any functions or exercising any powers under a delegation, the delegate must comply with any directions of the Minister.

52 Supply of liquor on Gallery premises

- (1) The regulations may make provision for and in relation to the sale, supply, disposal, possession or control of liquor on premises in the Australian Capital Territory owned by or under the control of the Gallery.
- (2) The law of the Australian Capital Territory relating to the sale, supply and disposal of liquor does not apply with respect to premises in respect of which regulations are in force under subsection (1).
- (3) In this section:

liquor means wine, spirits, ale, beer, porter, cider, perry or any liquid containing alcohol ordinarily used or fit for use as a beverage.

53 Control of Gallery land and buildings etc.

- (1) The regulations may make provision for and in relation to:
- (a) regulating, restricting or prohibiting the entry of persons onto any land, building or structure owned by or under the control of the Gallery; or
 - (b) regulating the conduct of persons on any such land, building or structure; or
 - (c) the removal of persons from any such land, building or structure.

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- (2) A reference in this section to any land, building or structure owned by or under the control of the Gallery includes a reference to a part of any such land, building or structure.

54 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) Without limiting subsection (1), the regulations may prescribe penalties, not exceeding 50 penalty units, for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 23 August 2012
Senate on 12 September 2012]*