



Australia Council (Consequential and Transitional Provisions) Act 2013

No. 72, 2013

An Act to deal with consequential and transitional matters in connection with the *Australia Council Act 2013*, and for related purposes

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

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[Assented to 27 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Australia Council (Consequential and Transitional Provisions) Act 2013*.

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 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 27 June 2013 |
| 2. Schedule 1 | At the same time as section 3 of the <i>Australia Council Act 2013</i> commences. | 1 July 2013 |
| 3. Schedule 2 | The later of: (a) the day this Act receives the Royal Assent; and (b) the day the <i>Australia Council Act 2013</i> receives the Royal Assent. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 27 June 2013 |

Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeal

Australia Council Act 1975

1 The whole of the Act

Repeal the Act.

Schedule 2—Transitional provisions

Part 1—Introduction

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.

continued Council means the Australia Council as continued in existence after the transition time.

Note: Section 7 of the new Act provides for the Australia Council to continue in existence.

Council transition means the transition from the old Council to the continued Council.

instrument includes an Act and any instrument made under an Act.

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

new Act means the *Australia Council Act 2013*.

new Board means the Board of the Australia Council established by section 14 of the new Act.

old Act means the *Australia Council Act 1975*, including regulations and other instruments made under that Act.

old Council means the Australia Council as established and in existence before the transition time.

Note: The Australia Council was established by section 4 of the old Act.

transition time means the commencement of section 3 of the new Act.

Part 2—The Council

2 Continuation of appointments of Chairperson and Deputy Chairperson

Chairperson

- (1) Subitem (2) applies to the person who, immediately before the transition time, holds office as the Chairperson of the old Council.
- (2) The instrument appointing the person to that office has effect, after the transition time, as if it were an instrument made by the Minister under section 17 of the new Act appointing the person, for the remainder of the period of the person's appointment to that office, to the office of Chair of the new Board.
- (3) A determination, in relation to the Chairperson of the old Council, that is in force immediately before the transition time under the *Remuneration Tribunal Act 1973* has effect after the transition time as if it were a determination in relation to the Chair of the new Board.

Deputy Chairperson

- (4) Subitem (5) applies to the person who, immediately before the transition time, holds office as the Deputy Chairperson of the old Council.
- (5) The instrument appointing the person to that office has effect, after the transition time, as if it were an instrument made by the Minister under section 17 of the new Act appointing the person, for the remainder of the period of the person's appointment as a member of the old Council, to the office of Deputy Chair of the new Board.
- (6) A determination, in relation to the Deputy Chairperson of the old Council, that is in force immediately before the transition time under the *Remuneration Tribunal Act 1973* has effect after the transition time as if it were a determination in relation to the Deputy Chair of the new Board.

3 Continuation of appointment of General Manager

- (1) Subitem (2) applies to the person who, immediately before the transition time:
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- (a) holds office as the General Manager of the old Council; or
 - (b) if no person holds office as referred to in paragraph (a)—is acting as General Manager of the old Council.
- (2) The instrument appointing the person to that office, or to act in that office, has effect, after the transition time, as if it were an instrument made by the new Board under section 36 of the new Act appointing the person to act as the Chief Executive Officer of the continued Council until the new Board makes an appointment under section 35 or 36 of the new Act.
- (3) A determination, in relation to the General Manager of the old Council, that is in force immediately before the transition time under the *Remuneration Tribunal Act 1973* has effect after the transition time as if it were a determination in relation to the Chief Executive Officer of the continued Council.
- (4) A determination, in relation to the General Manager of the old Council, that is in force immediately before the transition time under subsection 19A(3) of the old Act has effect after the transition time as if it were a determination under section 42 of the new Act in relation to the Chief Executive Officer of the continued Council.

4 Appointments of other members and officers

- (1) This item applies to a person who, immediately before the transition time, holds office as any of the following:
 - (a) a member of the old Council (other than the Chairperson, the Deputy Chairperson or the General Manager);
 - (b) a member of a committee established under section 17A of the old Act;
 - (c) a member of a Board established under section 20 of the old Act.
- (2) The person ceases to hold that office at the transition time.
- (3) Nothing in this item prevents the person being appointed to an office under the new Act.

5 Periods of appointment as member of old Council

The reference in paragraph 17(7)(b) of the new Act to periods of previous appointment of a person as an appointed Board member is taken to include any period, before the transition time, during which a person held office as a member of the old Council (other than as a result of subsection 9(4B) of the old Act).

6 Appointments of first members of new Board

Subsection 17(2) of the new Act applies, in relation to a proposed appointment of a member of the new Board before the transition time in accordance with section 4 of the *Acts Interpretation Act 1901*, as if the first reference to the Chair in that subsection were a reference to the Chairperson of the old Council.

Part 3—Effect of the Council transition

7 Object

- (1) The object of this Part is to avoid doubt about the effect of the Council transition on certain matters.
- (2) This Part has effect subject to the other provisions of this Schedule.

8 Employees of old Council

- (1) The Council transition does not affect the continuity of the employment, or the terms and conditions of employment, of the persons who, immediately before the transition time, are engaged as employees as referred to in section 41 of the old Act.
- (2) Those persons are taken, after the transition time, to be employees as referred to in section 43 of the new Act.

9 Assets and liabilities of old Council

Assets and liabilities of the old Council immediately before the transition time continue, after the transition time, to be assets and liabilities of the continued Council (without any conveyance, transfer or assignment).

10 References in instruments to old Council

A reference to the old Council in an instrument that is in force immediately before the transition time has effect, after the transition time, as a reference to the continued Council.

11 Effect of things done by, or in relation to, the old Council

A thing done by, or in relation to, the old Council before the transition time has effect, after the transition time, as if it had been done by, or in relation to, the continued Council.

12 Legal proceedings

If any proceedings to which the old Council is a party are pending in a court or tribunal immediately before the transition time, the continued Council is, after the transition time, that party to those proceedings.

Part 4—Reporting obligations

13 Final annual report of the old Council

- (1) The members of the new Board must prepare a report in accordance with Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* for the old Council for the transitional reporting period.
- (2) However, the report need not cover a period that has already been covered by a report given to the Minister by the members of the old Council under section 9 of the *Commonwealth Authorities and Companies Act 1997*.
- (3) The report must include the matters described in subsection 38(1) of the old Act as in force immediately before the transition time.
- (4) Schedule 1 to the *Commonwealth Authorities and Companies Act 1997*, and the Finance Minister's Orders referred to in that Schedule, apply in relation to the report as if:
 - (a) references in that Schedule, or those Orders, to the directors were references to the members of the new Board; and
 - (b) references in that Schedule, or those Orders, to an annual report were references to the report; and
 - (c) references in that Schedule, or those Orders, to a financial year were references to the transitional reporting period.
- (5) The members of the new Board must give the report to the Minister by the 15th day of the fourth month after the end of the transitional reporting period. The Minister may grant an extension of time in special circumstances.
- (6) The Minister must table the report in each House of the Parliament as soon as practicable.
- (7) In this item:

transitional reporting period means the period beginning at the start of the financial year before the financial year in which the transition time occurs and ending immediately before the transition time.

14 Contravention of final annual reporting requirement

- (1) If a final annual reporting requirement is contravened, each member of the new Board who:
 - (a) caused the contravention; or
 - (b) failed to take all reasonable steps to comply with the requirement, or secure compliance with the requirement;contravenes this subitem.
- (2) Schedule 2 to the *Commonwealth Authorities and Companies Act 1997* applies in relation to a contravention of subitem (1) of this item as if:
 - (a) subitem (1) of this item were a civil penalty provision specified in clause 1 of that Schedule; and
 - (b) subparagraphs 3(1)(b)(i) and (ii), clauses 4 and 5, subclause 6(2) and paragraph 11(c) of that Schedule were omitted; and
 - (c) the reference to “or a compensation order” in subclause 6(1) were omitted.
- (3) If a contravention of a final annual reporting requirement consists of an omission from the financial statements, it is a defence if the defendant proves that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by the Finance Minister’s Orders to be included in the statements.
- (4) In this item:

final annual reporting requirement means subitem 13(1), (3) or (5) of this Schedule.

15 First annual report of the continued Council

The first report prepared by the members of the new Board for the continued Council in accordance with Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* need not cover a period that has already been covered by a report given to the Minister under item 13 of this Schedule.

16 Review of performance in corporate plan

Paragraph 45(3)(g) of the new Act does not require a corporate plan to include a review of performance during any period before the first corporate plan comes into effect.

Part 5—Miscellaneous

17 Exemption from stamp duty and other State or Territory taxes

- (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 purpose of this item, an *exempt matter* is the operation of this Schedule in any respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was 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.

18 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the repeals or amendments made by this Act; or
 - (b) the enactment of this Act or the *Australia Council Act 2013*.

*[Minister's second reading speech made in—
House of Representatives on 20 March 2013
Senate on 17 June 2013]*

(84/13)

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2013