



# **Australia Council Amendment (Creative Australia) Act 2023**

**No. 15, 2023**

**An Act to amend the *Australia Council Act 2013*,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Australia Council Amendment (Creative Australia) Act 2023

No. 15, 2023

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## An Act to amend the *Australia Council Act 2013*, and for related purposes

[Assented to 11 April 2023]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Australia Council Amendment (Creative Australia) Act 2023*.

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 April 2023
2. Schedules 1 and 2	As follows: (a) if this Act receives the Royal Assent before 1 July 2023—1 July 2023; (b) if this Act receives the Royal Assent on or after 1 July 2023—a single day to be fixed by Proclamation.  However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2023 (paragraph (a) applies)

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Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Australia Council Act 2013*

#### **1 Section 4**

Insert:

*constitutional corporation* means a corporation to which paragraph 51(xx) of the Constitution applies.

#### **2 Section 6**

Repeal the section, substitute:

#### **6 Constitutional limits**

- (1) The Council may perform its functions only in accordance with this section.

*Main constitutional basis*

- (2) The Council may perform its functions with respect to activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.

*Other constitutional bases*

- (3) In addition, the Council may perform its functions with respect to:
- (a) activities that assist a corporation to which paragraph 51(xx) of the Constitution applies in the performance or development of its activities, functions, relationships or business; or
  - (b) trade and commerce:
    - (i) between Australia and places outside Australia; or
    - (ii) among the States; or
    - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
  - (c) statistics; or
  - (d) external affairs, including:

- (i) giving effect to any international agreement to which Australia is a party; and
- (ii) by way of the performance of its functions in a place outside Australia; or
- (e) a Territory, including in a Territory; or
- (f) copyrights, patents of inventions and designs, and trade marks; or
- (g) support for Aboriginal and Torres Strait Islander arts practice; or
- (h) a postal, telegraphic, telephonic, or other like service; or
- (i) the provision of benefits to students; or
- (j) the executive power of the Commonwealth; or
- (k) matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

*Meaning of terms*

- (4) A term used in this section and the Constitution has the same meaning in this section as it has in the Constitution.

**6A Provision of financial assistance to constitutional corporations**

*Applications*

- (1) A constitutional corporation may apply to the Council for financial assistance.
- (2) The Council must consider an application made under subsection (1) within a reasonable period after the application is made.
- (3) The Council may provide financial assistance in the performance of its functions to a constitutional corporation only if the corporation has applied to the Council for the assistance under subsection (1).

*Terms and conditions*

- (4) If the Council decides to provide financial assistance to a constitutional corporation:



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- (a) the terms and conditions on which the assistance is to be provided must be set out in a written agreement between the Council and the corporation; and
  - (b) the corporation must comply with the terms and conditions.
- (5) Without limiting subsection (4), the terms and conditions must provide for the circumstances in which the corporation must repay amounts of financial assistance or any other amounts to the Council.
- (6) An amount payable to the Council under the agreement:
- (a) is a debt due to the Council; and
  - (b) may be recovered by the Council in a court of competent jurisdiction.

### **3 At the end of section 7**

Add:

- (3) The Council may conduct its operations under its full name or under the name “Creative Australia”.

### **4 After paragraph 9(1)(e)**

Insert:

- (ea) to encourage, facilitate and recognise public sector, private sector, philanthropic and commercial support for, and investment in, the arts;
- (eb) to promote fair, safe and respectful workplaces for Australian artists and persons working in organisations that engage in, or support, Australian arts practice;
- (ec) to provide information, advice, training and mentoring on matters connected with the arts or the performance of the Council’s functions;

### **5 At the end of paragraph 9(1)(g)**

Add “, and support for, and investment in, the arts”.

***Income Tax Assessment Act 1997***

**6 Subsection 30-100(2) (table item 12.2.2)**

Repeal the item.

**7 Section 30-315 (table item 40AA)**

Repeal the item.

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## Schedule 2—Transitional provisions

### 1 Definitions

In this Schedule:

***Creative Partnerships Australia*** means Creative Partnerships Australia Ltd (ACN 072 479 835).

***reporting period*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***responsible Minister*** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

***rules*** means the rules made under item 14 of this Schedule.

***transition time*** means the commencement of Schedule 1.

### 2 Creative Partnerships Australia ceases to exist

- (1) Creative Partnerships Australia ceases to exist by force of this subitem at the transition time.
- (2) For the purposes of the *Corporations Act 2001*, Creative Partnerships Australia is taken to be deregistered at the transition time.

### 3 Things done by, or in relation to, Creative Partnerships Australia

- (1) If, before the transition time, a thing was done by, or in relation to, Creative Partnerships Australia, then the thing has effect, after the transition time, as if it had been done by, or in relation to, the Australia Council.
- (2) The rules may provide that subitem (1) does not apply in relation to a specified thing done by, or in relation to, Creative Partnerships Australia.

### 4 Transfer of records and documents

- (1) This item applies to any records or documents that were in the possession of Creative Partnerships Australia immediately before the transition time.

- (2) The records and documents are to be transferred to the Australia Council.

## 5 References in instruments

- (1) This item applies to an instrument that:
  - (a) was in force immediately before the transition time; and
  - (b) contains a reference to Creative Partnerships Australia.
- (2) The instrument has effect, after the transition time, as if the reference to Creative Partnerships Australia were a reference to the Australia Council.
- (3) This item does not prevent the instrument from being amended or repealed after the transition time.
- (4) The rules may provide that subitem (2) does not apply in relation to a specified reference or instrument.

## 6 Legal proceedings

If any proceedings to which Creative Partnerships Australia is a party are pending in any court or tribunal immediately before the transition time, the Australia Council is substituted for Creative Partnerships Australia, from the transition time, as a party to those proceedings.

## 7 Assets and liabilities of Creative Partnerships Australia

- (1) At the transition time, the assets and liabilities of Creative Partnerships Australia cease to be assets and liabilities of Creative Partnerships Australia and become assets and liabilities of the Australia Council without any conveyance, transfer or assignment.
- (2) The Australia Council becomes the successor in law in relation to those assets and liabilities.

### *Assets subject to trust*

- (3) If an asset that has become an asset of the Australia Council under this item was, immediately before the transition time, held by Creative Partnerships Australia on trust, that asset is taken, at and after the transition time, to be held by the Australia Council on trust and subject

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to the terms of the trust on which the asset was so held by Creative Partnerships Australia.

## **8 The Australian Cultural Fund**

- (1) This item applies to money standing to the credit of the Australian Cultural Fund immediately before the transition time.
- (2) That money may be applied, after the transition time, only for a purpose for which it could be applied immediately before the transition time.

## **9 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 purposes of this item, an *exempt matter* is:
  - (a) the vesting of an asset or liability under item 7; or
  - (b) the operation of this Schedule in any other respect.

### *Evidentiary certificate*

- (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, a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

## **10 Creative Partnerships Australia employees**

- (1) This item applies to a person who was employed by Creative Partnerships Australia immediately before the transition time.
- (2) At the transition time, the person ceases to be employed by Creative Partnerships Australia and is taken to have been employed by the Australia Council under subsection 43(1) of the *Australia Council Act 2013*.

- (3) The person is taken, at the transition time, to have accrued an entitlement to benefits, in connection with that employment by the Australia Council, that is equivalent to the entitlement that the person had, immediately before the transition time, as an employee of Creative Partnerships Australia.
- (4) The service of the person as an employee of the Australia Council is taken, for all purposes, to be continuous with the person's service as an employee of Creative Partnerships Australia.
- (5) To avoid doubt, this item does not apply in relation to:
  - (a) a director of Creative Partnerships Australia; or
  - (b) the Chief Executive Officer of Creative Partnerships Australia.

## 11 No payment as a result of transfer

To avoid doubt, a person who ceases to be an employee of Creative Partnerships Australia by the operation of this Schedule is not entitled to receive any payment or other benefit merely because the person stopped being such an employee.

## 12 Final annual report

- (1) This item applies if:
  - (a) the transition time occurs at the end of a reporting period or after the end of a reporting period; and
  - (b) the directors of Creative Partnerships Australia had not given the responsible Minister an annual report under section 97 of the *Public Governance, Performance and Accountability Act 2013* for the reporting period.
- (2) The Australia Council must prepare the report in accordance with section 97 of the *Public Governance, Performance and Accountability Act 2013* and rules made for the purposes of that section, and give the report to the responsible Minister as soon as reasonably practicable after the transition time.

## 13 Compensation for acquisition of property

- (1) If, and to the extent that, the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of
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the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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 the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

#### **14 Transitional 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) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to the transfer of functions from Creative Partnerships Australia to the Australia Council.
- (3) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Schedule or the *Australia Council Act 2013*.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitems (1) and (2).

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*[Minister's second reading speech made in—  
House of Representatives on 15 February 2023  
Senate on 9 March 2023]*

*(14/23)*

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