



# **Creative Australia Act 2023**

**No. 24, 2023**

**An Act to establish Creative Australia, 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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# Creative Australia Act 2023

No. 24, 2023

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## **An Act to establish Creative Australia, and for related purposes**

[Assented to 23 June 2023]

The Parliament of Australia enacts:

### **Part 1—Preliminary**

#### **1 Short title**

This Act is the *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. The whole of this Act	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.	24 August 2023 (F2023N00237)

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Note: This table relates only to the provisions of this Act as originally enacted.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

This Act establishes Creative Australia by providing for the body corporate previously known as the Australia Council to continue in existence under the name Creative Australia.

Creative Australia's functions relate, in general, to supporting and promoting Australian arts practice. Creative Australia must have regard to the Commonwealth Government's policies relating to the arts and to directions given by the Minister.

The Board is responsible for ensuring the proper and efficient performance of Creative Australia's functions. The Board appoints



the CEO, who is responsible for the day-to-day administration of Creative Australia.

The Music Australia Council and the Creative Workplaces Council are established to advise the Board about the responsibilities of Music Australia and Creative Workplaces, which are parts of Creative Australia.

The Board may also establish committees to advise or assist in the performance of Creative Australia's functions or the Board's functions.

Creative Australia may engage staff and consultants.

#### **4 Definitions**

In this Act:

***Aboriginal and Torres Strait Islander arts practice*** means the creation or performance, wholly or partly by artists who are Aboriginal persons or Torres Strait Islanders, of arts.

***appointed Board member*** means a Board member other than the CEO.

***appointed Music Australia Council member*** means a member of the Music Australia Council other than the CEO.

***arts*** means the creation or performance of works of interpretative expression through any medium.

***Australian artist*** means an artist who is an Australian citizen or an Australian resident.

***Australian arts practice*** means the creation or performance, wholly or partly by Australian artists, of arts.

***Australian contemporary music practice*** means the creation or performance, wholly or partly by Australian artists, of contemporary music.

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***Australian resident*** means an individual who resides in Australia and is the holder (within the meaning of the *Migration Act 1958*) of a permanent visa (within the meaning of that Act).

***Board*** means the Australia Council Board.

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

***CEO*** means the Chief Executive Officer of Creative Australia.

***Chair*** means the Chair of the Board.

***committee*** means a committee established under section 61.

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

***Creative Australia*** means the body corporate continued in existence by section 9 under the name Creative Australia.

***Creative Workplaces Council*** means the Creative Workplaces Council established by section 49.

***Creative Workplaces Council member*** means a member of the Creative Workplaces Council, and includes the Chair of the Workplaces Council.

***Deputy Chair*** means the Deputy Chair of the Board.

***finance law*** has the same meaning as in the PGPA Act.

***Finance Minister*** means the Minister administering the PGPA Act.

***Music Australia Council*** means the Music Australia Council established by section 37.

***old Act*** means the *Australia Council Act 2013*, as in force immediately before its repeal.

***paid work*** means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

**PGPA Act** means the *Public Governance, Performance and Accountability Act 2013*.

**rules** means rules made by the Minister under section 86.

## **5 Extension to external Territories**

This Act extends to the external Territories.

## **6 Constitutional limits**

- (1) Creative Australia may perform its functions only in accordance with this section.

*Main constitutional basis*

- (2) Creative Australia 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, Creative Australia may perform its functions with respect to:
- (a) activities that assist a constitutional corporation 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

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- (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.

**7 Provision of financial assistance to constitutional corporations**

*Applications*

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

*Terms and conditions*

- (4) If Creative Australia decides to provide financial assistance to a constitutional corporation:
  - (a) the terms and conditions on which the assistance is to be provided must be set out in a written agreement between Creative Australia 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 Creative Australia.
- (6) An amount payable to Creative Australia under the agreement:
  - (a) is a debt due to Creative Australia; and
  - (b) may be recovered by Creative Australia in a court of competent jurisdiction.

## Part 2—Creative Australia

### Division 1—Introduction

#### 8 Simplified outline of this Part

This Part establishes Creative Australia by providing for the body corporate previously known as the Australia Council to continue in existence under the name Creative Australia.

Creative Australia's functions relate, in general, to supporting and promoting Australian arts practice. Those functions include:

- (a) promoting participation in, and the appreciation, knowledge and understanding of, the arts; and
- (b) encouraging, facilitating and recognising investment in the arts; and
- (c) providing information and advice, including to the Commonwealth Government, on matters connected with the arts; and
- (d) conducting and commissioning research into, and publishing information about, the arts.

Music Australia and Creative Workplaces, which are parts of Creative Australia, have specified responsibilities relating to the arts.

The Minister may give directions to the Board, including about the performance of Creative Australia's functions.

## **Division 2—Establishment etc. of Creative Australia**

### **9 Establishment**

The body corporate that was continued in existence under the name the Australia Council by section 7 of the old Act continues in existence as a body corporate, under and subject to the provisions of this Act, under the name Creative Australia.

### **10 Constitution of Creative Australia**

- (1) Creative Australia:
  - (a) must have a seal; and
  - (b) may acquire, hold and dispose of real and personal property; and
  - (c) may sue and be sued.

Note: The PGPA Act applies to Creative Australia. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

- (2) Creative Australia's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

### **11 Functions**

- (1) Creative Australia has the following functions:
  - (a) to support Australian arts practice that is recognised for excellence;
  - (b) to foster excellence in Australian arts practice by supporting a diverse range of activities;
  - (c) to support Aboriginal and Torres Strait Islander arts practice;
  - (d) to support Australian arts practice that reflects the diversity of Australia;
  - (e) to uphold and promote freedom of expression in the arts;
  - (f) to promote community participation in the arts;
  - (g) to recognise and reward significant contributions made by artists and other persons to the arts in Australia;

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- (h) to promote the appreciation, knowledge and understanding of the arts;
- (i) to support and promote the development of markets and audiences for the arts;
- (j) to encourage, facilitate and recognise public sector, private sector, philanthropic and commercial support for, and investment in, the arts;
- (k) to promote fair, safe and respectful workplaces for:
  - (i) Australian artists; and
  - (ii) persons who are employed, or otherwise engaged, by organisations that engage in, or support, Australian arts practice; and
  - (iii) persons otherwise involved in Australian arts practice;
- (l) to provide information, advice, training and mentoring on matters connected with the arts or the performance of Creative Australia's functions;
- (m) to provide information and advice to the Commonwealth Government on matters connected with the arts or the performance of Creative Australia's functions;
- (n) to conduct and commission research into, and publish information about, the arts, and support for, and investment in, the arts;
- (o) to evaluate, and publish information about, the impact of the support Creative Australia provides;
- (p) to undertake any other function conferred on it by this Act or any other law of the Commonwealth;
- (q) to do anything incidental or conducive to the performance of any of the above functions.

*Creative Australia may charge fees*

- (2) Creative Australia may charge fees for things done in performing its functions.
- (3) A fee must not be such as to amount to taxation.



*Creative Australia may cooperate with others*

- (4) Creative Australia may perform its functions alone or together with other persons.

*Creative Australia may perform functions outside Australia*

- (5) The functions of Creative Australia may be performed within or outside Australia.
- (6) However, Creative Australia may only perform its functions outside Australia if it does so for the benefit of Australia, Australian citizens or Australian residents.

## **12 Powers**

- (1) Creative Australia has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (2) Creative Australia's powers include, but are not limited to, the following powers:
- (a) the power to enter into contracts;
  - (b) the power to erect buildings;
  - (c) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of Creative Australia;
  - (d) the power to acquire, hold and dispose of real or personal property;
  - (e) the power to accept gifts, devises, bequests and assignments (whether on trust or otherwise);
  - (f) the power to act as trustee of money or other property vested in Creative Australia on trust;
  - (g) the power to provide financial assistance (whether by way of loan, grant, investment, award or otherwise and whether on commercial terms or otherwise);
  - (h) the power to provide guarantees;
  - (i) the power to commission or sponsor arts projects or other activities;

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- (j) the power to provide or administer services, facilities, programs or equipment;
  - (k) the power to do anything incidental to any of its powers.
- (3) Despite anything contained in this Act, any money or other property held by Creative Australia on trust, or accepted by Creative Australia subject to a condition, must be dealt with in accordance with the obligations of Creative Australia as trustee of the trust, or as the person who has accepted the money or other property subject to the condition.

### 13 Matters to be taken into account by Creative Australia

Creative Australia must, in the performance of its functions and the exercise of its powers, have regard to:

- (a) the policies of the Commonwealth Government in relation to the arts; and
- (b) any matters specified in directions given under subsection 14(1).

### 14 Ministerial directions

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

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The Minister must not give a direction in relation to the making of a decision by Creative Australia, in a particular case, relating to the provision of support (including by the provision of financial assistance or a guarantee).
- (3) The Board must ensure that any direction given by the Minister under subsection (1) is complied with.

- (4) This section does not limit the operation of section 19 of the PGPA Act (which deals with the duty to keep the responsible Minister and Finance Minister informed).

**15 Creative Australia does not have privileges and immunities of the Crown**

Creative Australia does not have the privileges and immunities of the Crown in right of the Commonwealth.

## **Division 3—Parts of Creative Australia**

### **16 Music Australia**

- (1) There is to be a part of Creative Australia known as Music Australia.
- (2) Music Australia is responsible for:
  - (a) supporting and promoting Australian contemporary music practice; and
  - (b) supporting and promoting the development of markets and audiences for Australian contemporary music practice; and
  - (c) any other matter as directed by the Board.
- (3) The CEO must, in writing, designate an employee of Creative Australia as the director of Music Australia.
- (4) The CEO must consult the Minister before designating a person under subsection (3).

### **17 Creative Workplaces**

- (1) There is to be a part of Creative Australia known as Creative Workplaces.
- (2) Creative Workplaces is responsible for:
  - (a) promoting fair, safe and respectful workplaces for:
    - (i) Australian artists; and
    - (ii) persons who are employed, or otherwise engaged, by organisations that engage in, or support, Australian arts practice; and
    - (iii) persons otherwise involved in Australian arts practice; and
  - (b) providing information and advice about the matter mentioned in paragraph (a); and
  - (c) any other matter as directed by the Board.

- (3) The CEO must, in writing, designate an employee of Creative Australia as the director of Creative Workplaces.
- (4) The CEO must consult the Minister before designating a person under subsection (3).

## **Part 3—The Australia Council Board**

### **Division 1—Introduction**

#### **18 Simplified outline of this Part**

This Part establishes the Australia Council Board.

The Board is responsible for ensuring the proper and efficient performance of Creative Australia's functions.

The Board consists of the Chair, the Deputy Chair, the CEO and up to 11 other members. The Minister appoints the members of the Board other than the CEO. The Minister must consult the Chair before appointing a member other than the Chair.

This Part also deals with the terms and conditions of appointment for appointed Board members and the meetings of the Board.

## **Division 2—The Board**

### **19 Establishment**

The Australia Council Board is established by this section.

### **20 Role**

- (1) The Board is responsible for ensuring the proper and efficient performance of Creative Australia'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, Creative Australia by the Board, or with the authority of the Board, is taken to have been done by Creative Australia.
- (4) If a function or power of Creative Australia is dependent on the opinion, belief or state of mind of Creative Australia 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.

### **21 Membership**

- (1) The Board consists of the following members:
  - (a) the Chair;
  - (b) the Deputy Chair;
  - (c) the CEO;
  - (d) not fewer than 5, and not more than 11, other members.
- (2) 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 8 (but not below 6) for a period of not more than 6 months.

## Division 3—Appointment etc. of appointed Board members

### 22 Appointment

- (1) The appointed Board members are to be appointed by the Minister by written instrument.

Note: The **appointed Board members** are the Board members other than the CEO (see section 4).

- (2) The Minister must consult the Chair before appointing an appointed Board member other than the Chair.
- (3) A person must not be appointed as an appointed Board member unless the Minister is satisfied that the person has appropriate qualifications, knowledge, skills or experience.
- (4) In making appointments, the Minister must have regard to the desirability of the Board including members who have skills, experience or involvement in the arts.
- (5) An appointed Board member holds office on a part-time basis.
- (6) An appointed Board member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

Note: An appointed Board member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (7) A person must not be appointed as an appointed 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 an appointed Board member (within the meaning of this Act or the old Act).



## 23 Acting appointments

### *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
    - (ii) is, for any reason, unable to perform the duties of the office.

### *Acting appointments*

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

- (4) Subsections 22(3), (4) and (7) apply to an appointment under subsection (3) of this section in the same way as they apply to an appointment under section 22.

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

**24 Remuneration**

- (1) An appointed 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 member is to be paid the remuneration that is prescribed by the rules.
- (2) An appointed Board member is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**25 Leave**

- (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 appointed Board member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants an appointed Board member leave of absence for a period that exceeds 6 months.

**26 Resignation**

- (1) An appointed Board member may resign the member's 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.

## **27 Termination**

- (1) The Minister may terminate the appointment of an appointed Board member:
- (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of an appointed Board member if:
- (a) the 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 the member's creditors; or
    - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
  - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board.

Note: The appointment of an appointed Board member may also be terminated under section 30 of the PGPA Act (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

## **28 Other terms and conditions**

An appointed 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 4—Procedures of the Board**

### **29 Convening meetings**

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chair:
  - (a) may convene a meeting at any time; and
  - (b) must convene at least 4 meetings each calendar year; and
  - (c) must convene a meeting within 30 days after receiving a written request to do so from:
    - (i) a majority of the current appointed Board members; or
    - (ii) the Minister.

### **30 Quorum**

- (1) At a meeting of the Board, a quorum is constituted by a majority of the current appointed Board members.
- (2) However, if:
  - (a) an appointed Board member is required by rules made for the purposes of section 29 of the PGPA Act 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 appointed Board member leaves the meeting concerned there is no longer a quorum present;the remaining appointed Board members constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.

### **31 Presiding at meetings**

- (1) The Chair must preside at all meetings of the Board at which the Chair is present.
  - (2) If the Chair is not present at a meeting of the Board, the Deputy Chair, if present, must preside at the meeting.
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- (3) If neither the Chair nor the Deputy Chair is present at a meeting of the Board, the other appointed Board members present must appoint one of themselves to preside.

### **32 Voting at meetings**

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the appointed Board members present and voting.
- (2) The person presiding at the meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

### **33 Minutes**

The Board must keep minutes of its meetings.

### **34 Conduct of meetings**

The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

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

### **35 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 appointed 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 appointed Board members were informed of the proposed decision, or reasonable efforts were made to inform all the current appointed Board members of the proposed decision.
- (2) Subsection (1) applies only if the Board:

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- (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which appointed Board members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), an appointed Board member is not entitled to vote on a proposed decision if the 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—Music Australia Council**

### **Division 1—Introduction**

#### **36 Simplified outline of this Part**

This Part establishes the Music Australia Council.

The function of the Music Australia Council is to advise the Board about the responsibilities of Music Australia. The Board may also direct the Council to perform a particular function, or exercise a particular power, of Creative Australia.

The Council consists of the Chair of the Council and 8 other members. The CEO must be the Chair of the Council and the other members are appointed by the Minister.

This Part also deals with the terms and conditions of appointment for Council members (other than the CEO) and the procedures of the Council.

## **Division 2—Establishment etc. of Music Australia Council**

### **37 Establishment**

The Music Australia Council is established by this section.

### **38 Functions**

- (1) The Music Australia Council has the following functions:
  - (a) to advise the Board about the responsibilities of Music Australia;
  - (b) to perform a function, or exercise a power, of Creative Australia as directed under subsection (2);
  - (c) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The Board may direct the Music Australia Council to perform a particular function, and to exercise a particular power, of Creative Australia.
- (3) The Board may give directions to the Music Australia Council relating to the performance of the Council's functions. The Council must comply with any such directions.
- (4) If a direction given under subsection (2) or (3) is given in writing, the direction is not a legislative instrument.

### **39 Membership**

- (1) The Music Australia Council consists of:
  - (a) the Chair of the Music Australia Council; and
  - (b) 8 other members.
- (2) The Chair of the Music Australia Council must be the CEO.
- (3) For the purposes of the finance law, an appointed Music Australia Council member is an official of Creative Australia.



## **Division 3—Appointment etc. of appointed Music Australia Council members**

### **40 Appointment**

- (1) The appointed Music Australia Council members are to be appointed by the Minister by written instrument.

Note: The *appointed Music Australia Council members* are the members of the Music Australia Council other than the CEO (see section 4).

- (2) The Minister must consult the Chair of the Music Australia Council before appointing an appointed Music Australia Council member.
- (3) A person must not be appointed as an appointed Music Australia Council member unless the Minister is satisfied that the person has appropriate qualifications, knowledge, skills or experience.
- (4) An appointed Music Australia Council member holds office on a part-time basis.
- (5) An appointed Music Australia Council member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

Note: An appointed Music Australia Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (6) A person must not be appointed as an appointed Music Australia Council 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 an appointed Music Australia Council member.

### **41 Acting appointments**

- (1) The Minister may, by written instrument, appoint an appointed Music Australia Council member to act as the Chair of the Music Australia Council:

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- (a) during a vacancy in the office of Chair of the Music Australia Council (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair of the Music Australia Council:
    - (i) is absent from duty; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may, by written instrument, appoint a person to act as an appointed Music Australia Council member:
- (a) during a vacancy in the office of an appointed Music Australia Council member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when an appointed Music Australia Council member:
    - (i) is acting as the Chair of the Music Australia Council; or
    - (ii) is absent from duty; or
    - (iii) is, for any reason, unable to perform the duties of the office.
- (3) Subsections 40(3) and (6) apply in relation to appointments under subsection (2) of this section in the same way as they apply to an appointment under section 40.

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

**42 Remuneration**

- (1) An appointed Music Australia Council 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 member is to be paid the remuneration that is prescribed by the rules.
- (2) An appointed Music Australia Council member is to be paid the allowances that are prescribed by the rules.

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

#### **43 Leave**

- (1) The Minister may grant the Chair of the Music Australia Council leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair of the Music Australia Council may grant leave of absence to any appointed Music Australia Council member on the terms and conditions that the Chair determines.
- (3) The Chair of the Music Australia Council must notify the Minister if the Chair grants an appointed Music Australia Council member leave of absence for a period that exceeds 6 months.

#### **44 Resignation**

- (1) An appointed Music Australia Council member may resign the member's 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.

#### **45 Termination**

- (1) The Minister may terminate the appointment of an appointed Music Australia Council member:
- (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of an appointed Music Australia Council member if:
- (a) the member:
    - (i) becomes bankrupt; or

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- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with the member's creditors; or
  - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
- (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Music Australia Council.

**46 Other terms and conditions**

An appointed Music Australia Council 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 4—Procedures of the Music Australia Council**

### **47 Procedures**

- (1) The Music Australia Council may, subject to any direction given under subsection (2), determine its own procedures.
- (2) The Board may give the Music Australia Council written directions about the Council's procedures.
- (3) A direction given under subsection (2) is not a legislative instrument.

## **Part 5—Creative Workplaces Council**

### **Division 1—Introduction**

#### **48 Simplified outline of this Part**

This Part establishes the Creative Workplaces Council.

The function of the Creative Workplaces Council is to advise the Board about the responsibilities of Creative Workplaces. The Board may also direct the Council to perform a particular function, or exercise a particular power, of Creative Australia.

The Council consists of the Chair of the Council and 6 other members, all of whom are appointed by the Minister. The CEO is not eligible for appointment.

This Part also deals with the terms and conditions of appointment for Council members and the procedures of the Council.

## **Division 2—Establishment etc. of Creative Workplaces Council**

### **49 Establishment**

The Creative Workplaces Council is established by this section.

### **50 Functions**

- (1) The Creative Workplaces Council has the following functions:
  - (a) to advise the Board about the responsibilities of Creative Workplaces;
  - (b) to perform a function, or exercise a power, of Creative Australia as directed under subsection (2);
  - (c) to do anything incidental or conducive to the performance of the above functions.
- (2) The Board may direct the Creative Workplaces Council to perform a particular function, and to exercise a particular power, of Creative Australia.
- (3) The Board may give directions to the Creative Workplaces Council relating to the performance of the Council's functions. The Council must comply with any such directions.
- (4) If a direction given under subsection (2) or (3) is given in writing, the direction is not a legislative instrument.

### **51 Membership**

- (1) The Creative Workplaces Council consists of:
  - (a) the Chair of the Creative Workplaces Council; and
  - (b) 6 other members.
- (2) For the purposes of the finance law, a Creative Workplaces Council member is an official of Creative Australia.

### **Division 3—Appointment etc. of Creative Workplaces Council members**

#### **52 Appointment**

- (1) The Creative Workplaces Council members are to be appointed by the Minister by written instrument.
- (2) The Minister must consult the Chair of the Creative Workplaces Council before appointing another Creative Workplaces Council member.
- (3) A person must not be appointed as a Creative Workplaces Council member unless the Minister is satisfied that the person has appropriate qualifications, knowledge, skills or experience.
- (4) The CEO must not be appointed as a Creative Workplaces Council member.
- (5) A Creative Workplaces Council member holds office on a part-time basis.
- (6) A Creative Workplaces Council member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.  

Note: A Creative Workplaces Council member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.
- (7) A person must not be appointed as a Creative Workplaces Council 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 Creative Workplaces Council member.

#### **53 Acting appointments**

- (1) The Minister may, by written instrument, appoint a Creative Workplaces Council member to act as the Chair of the Creative Workplaces Council:
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- (a) during a vacancy in the office of Chair of the Creative Workplaces Council (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair of the Creative Workplaces Council:
    - (i) is absent from duty; or
    - (ii) is, for any reason, unable to perform the duties of the office.
- (2) The Minister may, by written instrument, appoint a person to act as a Creative Workplaces Council member (other than the Chair of the Creative Workplaces Council):
- (a) during a vacancy in the office of a Creative Workplaces Council member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a Creative Workplaces Council member:
    - (i) is acting as the Chair; or
    - (ii) is absent from duty; or
    - (iii) is, for any reason, unable to perform the duties of the office.
- (3) Subsections 52(3), (4) and (7) apply to an appointment under subsection (2) of this section in the same way as they apply to an appointment under section 52.

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

## 54 Remuneration

- (1) A Creative Workplaces Council 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 member is to be paid the remuneration that is prescribed by the rules.
- (2) A Creative Workplaces Council member is to be paid the allowances that are prescribed by the rules.

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

**55 Leave**

- (1) The Minister may grant the Chair of the Creative Workplaces Council leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair of the Creative Workplaces Council may grant leave of absence to any other Creative Workplaces Council member on the terms and conditions that the Chair determines.
- (3) The Chair of the Creative Workplaces Council must notify the Minister if the Chair grants another Creative Workplaces Council leave of absence for a period that exceeds 6 months.

**56 Resignation**

- (1) A Creative Workplaces Council member may resign the member's 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.

**57 Termination**

- (1) The Minister may terminate the appointment of a Creative Workplaces Council member:
- (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of a Creative Workplaces Council member if:
- (a) the 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 the member's creditors; or
- (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
- (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Creative Workplaces Council.

### **58 Other terms and conditions**

A Creative Workplaces Council 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 4—Procedures of the Creative Workplaces Council**

### **59 Procedures**

- (1) The Creative Workplaces Council may, subject to any direction given under subsection (2), determine its own procedures.
- (2) The Board may give the Creative Workplaces Council written directions about the Council's procedures.
- (3) A direction given under subsection (2) is not a legislative instrument.

## **Part 6—Committees**

### **60 Simplified outline of this Part**

This Part provides for the Board to establish committees to advise or assist in the performance of Creative Australia’s functions or the Board’s functions, in accordance with any determinations or directions by the Board.

### **61 Committees**

- (1) The Board may establish committees to advise or assist in the performance of Creative Australia’s functions or the Board’s functions.
- (2) If the terms of reference of a committee include providing advice, or making recommendations, about policy, or the provision of financial assistance or guarantees, in relation to the arts (or any of the arts), the Board must ensure that the members of the committee include at least one person who has relevant experience in the arts.
- (3) A committee may be constituted:
  - (a) wholly by Board members; or
  - (b) wholly by persons who are not Board members; or
  - (c) partly by Board members and partly by other persons.
- (4) The Board may determine for a committee:
  - (a) the committee’s terms of reference; and
  - (b) subject to section 62, the terms and conditions of appointment of the members of the committee; and
  - (c) the procedures to be followed by the committee.
- (5) The Board may give directions to a committee in relation to the advice or assistance that the committee is to provide to the Board. The committee must comply with those directions.

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- (6) If a direction given to a committee under subsection (5) is in writing, the direction is not a legislative instrument.
- (7) For the purposes of the finance law, a member of a committee established under this section is an official of Creative Australia.

**62 Remuneration and allowances**

- (1) This section applies if a committee is established under section 61.
- (2) A committee 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 member is to be paid the remuneration that is prescribed by the rules.
- (3) A committee member is to be paid the allowances that are prescribed by the rules.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **Part 7—CEO, staff and consultants**

### **Division 1—Introduction**

#### **63 Simplified outline of this Part**

There is to be a Chief Executive Officer of Creative Australia, who is responsible for the day-to-day administration of Creative Australia.

The CEO is appointed by the Board with the written agreement of the Minister and must act in accordance with any policies determined, and any directions given, by the Board.

This Part also makes provision for Creative Australia to engage staff and consultants.

## Division 2—Chief Executive Officer

### 64 Establishment

There is to be a Chief Executive Officer of Creative Australia.

### 65 Role

- (1) The CEO is responsible for the day-to-day administration of Creative Australia.  

Note: The CEO is also a member of the Board (see section 21), but is not entitled to vote at meetings of the Board (see section 32 and the definition of *appointed Board member* in section 4).
- (2) The CEO has power to do all things necessary or convenient to be done for, or in connection with, the performance of the CEO's duties.
- (3) The CEO is to act in accordance with any policies determined, and any directions given, by the Board.
- (4) All acts and things done in the name of, or on behalf of, Creative Australia by the CEO, or with the authority of the CEO, are taken to have been done by Creative Australia.
- (5) If a function or power of Creative Australia is dependent on the opinion, belief or state of mind of Creative Australia 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 (4) in relation to that matter.
- (6) If a policy or direction under subsection (3) is in writing, the policy or direction is not a legislative instrument.

### 66 Appointment

- (1) The CEO is to be appointed by the Board with the written agreement of the Minister.
- (2) The appointment is to be by written instrument.



- (3) The CEO holds office on a full-time basis.
- (4) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

### **67 Acting appointment**

The Board may, with the written agreement of the Minister, appoint a person to act as the CEO:

- (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
  - (i) is absent from duty; 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*.

### **68 Other paid work**

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

### **69 Remuneration**

- (1) The CEO 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 CEO is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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### **70 Leave**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chair may grant the CEO 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 notify the Minister if the Chair grants the CEO leave for a period that exceeds one month.

### **71 Resignation**

- (1) The CEO may resign the CEO's 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 CEO resigns under this section, the Chair must notify the Minister of the resignation.

### **72 Termination**

- (1) The Board may, with the written agreement of the Minister, terminate the appointment of the CEO:
  - (a) for misbehaviour; or
  - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity; or
  - (c) if the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period; or
  - (d) if the CEO:
    - (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 the CEO's creditors; or
    - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or

- (e) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (f) if the CEO engages, except with the Chair's approval, in paid work outside the duties of the CEO's office.
- (2) Section 30 of the PGPA Act applies in relation to the appointment of the CEO under subsection 66(1) of this Act as if the Board were a person.

Note: The appointment of the CEO may be terminated under section 30 of the PGPA Act (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

### **73 Other terms and conditions**

The CEO 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 3—Staff and consultants**

### **74 Staff**

- (1) Creative Australia may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that Creative Australia determines in writing.

### **75 Consultants**

Creative Australia may engage consultants to assist in the performance of its functions.

## **Part 8—Reporting and finance**

### **76 Simplified outline of this Part**

This Part makes provision in relation to the annual report and financial matters.

### **77 Annual report etc.**

- (1) The annual report prepared by the Board and given to the Minister under section 46 of the PGPA Act for a period must include:
  - (a) the text of any directions given during that period under subsection 14(1); and
  - (b) the details of any guarantees given by Creative Australia during that period.
- (2) The Minister must cause any report or document that the Board gives the Minister under paragraph 19(1)(b) of the PGPA Act to be tabled in each House of the Parliament as soon as practicable.

### **78 Money payable to Creative Australia**

- (1) There is payable to Creative Australia such money as is appropriated by the Parliament for the purposes of Creative Australia.
- (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 Creative Australia.
- (3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.

### **79 Application of money by Creative Australia**

- (1) The money of Creative Australia is to be applied only:
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- (a) in payment or discharge of the costs, expenses and other obligations incurred or undertaken by Creative Australia 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.

Note: See subsection 12(3) for the obligations of Creative Australia in relation to money or other property held on trust or accepted subject to a condition.

- (2) Subsection (1) does not prevent investment, under section 59 of the PGPA Act, of money that is not immediately required for the purposes of Creative Australia.

**80 Restrictions on financial transactions**

- (1) Creative Australia 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 mentioned in subsection (2); 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 mentioned in subsection (2); or
  - (c) enter into a contract for the construction of a building for Creative Australia, being a contract under which Creative Australia is to pay an amount exceeding the amount mentioned in subsection (2); or
  - (d) enter into a lease of land for a period exceeding 10 years.
- (2) For the purposes of paragraphs (1)(a), (b) and (c), the amount is:
  - (a) \$5 million; or
  - (b) if the rules prescribe a different amount—that prescribed amount.
- (3) Paragraphs (1)(a) and (b) do not apply to transactions in the course of the exercise of Creative Australia's powers under paragraph 12(2)(g) or (h).

- (4) Creative Australia must not borrow money from any person.
- (5) Nothing in subsection (4) affects Creative Australia's ability to obtain goods or services on credit in accordance with section 57 of the PGPA Act (which deals with borrowing by corporate Commonwealth entities).
- (6) An approval under subsection (1) is not a legislative instrument.

## **81 Investment**

- (1) Creative Australia may invest money, under paragraph 12(2)(g), in the course of the direct performance of its functions.

Note: Paragraph 12(2)(g) gives Creative Australia power to make investments, but only as a means of providing financial assistance. It does not give Creative Australia a general power to make investments.

- (2) Subsection (1) applies in addition to investment, under section 59 of the PGPA Act, of money that is not immediately required for the purposes of Creative Australia.

## **82 Taxation**

Creative Australia is not subject to taxation under any law of the Commonwealth or of a State or Territory.

Note: Despite this section, Creative Australia 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 9—Other matters

### 83 Simplified outline of this Part

This Part deals with miscellaneous matters.

### 84 Delegation by the Minister

- (1) The Minister may, in writing, delegate the Minister's powers under sections 80 and 86 of this Act to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or an acting SES employee, in the Department.

Note 1: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In exercising a delegated power, the delegate must comply with any written directions of the Minister.

### 85 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of 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.



**86 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) 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 Act.

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*[Minister's second reading speech made in—  
House of Representatives on 25 May 2023  
Senate on 13 June 2023]*

(67/23)