



Creative Australia (Consequential and Transitional Provisions) Act 2023

No. 25, 2023

An Act to deal with consequential and transitional matters arising from the enactment of the *Creative Australia Act 2023*, 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 (Consequential and Transitional Provisions) Act 2023

No. 25, 2023

An Act to deal with consequential and transitional matters arising from the enactment of the *Creative Australia Act 2023*, and for related purposes

[Assented to 23 June 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Creative Australia (Consequential and Transitional Provisions) Act 2023*.

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
Provisions	Commencement	Date/Details
1. The whole of this Act	At the same time as the <i>Creative Australia Act 2023</i> commences. However, the provisions do not commence at all if that Act does not commence.	24 August 2023

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Repeals

Australia Council Act 2013

1 The whole of the Act

Repeal the Act.

Schedule 2—Transitional provisions

Part 1—Preliminary

1 Definitions

In this Schedule:

Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

asset means:

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

Australia Council means the body corporate continued in existence by section 7 of the old Act under the name the Australia Council.

Creative Australia means the body corporate continued in existence by section 9 of the new Act under the name Creative Australia.

instrument includes:

- (a) a contract, deed, undertaking, arrangement or agreement; and
- (b) a notice, authority, order or instruction; and
- (c) an instrument made under an Act or regulation.

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

new Act means the *Creative Australia Act 2023*.

new Board means the Australia Council Board established under section 19 of the new Act.

old Act means the *Australia Council Act 2013*, as in force immediately before the transition time.

old Board means the Board of the Australia Council established under section 14 of the old Act.

transition time means the commencement of this Schedule.

Part 2—Effect of transition to Creative Australia

2 Object

The object of this Part is to avoid doubt about the effect of continuing the existence of the body corporate Creative Australia, previously known as the Australia Council, on certain matters.

3 Appointment of CEO

- (1) This item applies to a person who was, immediately before the transition time, holding office as the Chief Executive Officer of the Australia Council.
- (2) The person is taken, after the transition time, to have been appointed under section 66 of the new Act as the Chief Executive Officer of Creative Australia:
 - (a) for the balance of the person's term of appointment that remained immediately before that time; and
 - (b) on the same terms and conditions as applied to the person immediately before that time.
- (3) This item does not prevent those terms and conditions being varied after the transition time.

4 Employees of the Australia Council

- (1) A person who, immediately before the transition time, was employed by the Australia Council under section 43 of the old Act is taken, after the transition time, to be employed by Creative Australia under section 74 of the new Act on the same terms and conditions.
- (2) The repeal of the old Act does not affect the continuity of employment of the person.

5 Consultants to the Australia Council

A person who, immediately before the transition time, was engaged by the Australia Council as a consultant under section 44 of the old Act is taken, after the transition time, to be engaged by Creative Australia as a

consultant under section 75 of the new Act on the same terms and conditions.

6 Assets and liabilities of the Australia Council

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

7 References in instruments to the Australia Council

- (1) This item applies to an instrument that:
 - (a) was in force immediately before the transition time; and
 - (b) contains a reference to the Australia Council.
- (2) The instrument has effect, after the transition time, as if the reference to the Australia Council were a reference to Creative Australia.
- (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 instrument or a specified reference.

8 Effect of things done by, or in relation to, the Australia Council

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

9 Legal proceedings

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

Part 3—Appointments

10 Cessation of appointments of old Board members

- (1) This item applies to a person (other than the Chief Executive Officer of the Australia Council) who, immediately before the transition time, holds office as a member of the old Board.
- (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.

11 Committees cease to exist

- (1) This item applies in relation to a committee that:
 - (a) was established under section 31 of the old Act; and
 - (b) existed immediately before the transition time.
- (2) The committee ceases to exist at the transition time.

12 Consultation for new appointments

Appointment of new Board members

- (1) Subsection 22(2) of the new Act does not apply in relation to an appointment made under subsection 22(1) of the new Act that takes effect at the transition time.

Appointment of new Music Australia Council members

- (2) Subsection 40(2) of the new Act does not apply in relation to an appointment made under subsection 40(1) of the new Act that takes effect at the transition time.

Appointment of new Creative Workplaces Council members

- (3) Subsection 52(2) of the new Act does not apply in relation to an appointment made under subsection 52(1) of the new Act that takes effect at the transition time.

Part 4—Reporting and finance

13 Transfer of appropriated money

For the purposes of the operation of an Appropriation Act after the transition time, references to the Australia Council are to be read as references to Creative Australia.

14 Annual reports for financial year ended before transition time

- (1) This item applies if:
 - (a) the transition time occurs after the end of a financial year; and
 - (b) the annual report referred to in section 51 of the old Act had not been prepared for the financial year before the transition time.
- (2) The new Board must, as soon as reasonably practicable after the transition time, prepare the annual report for the financial year in accordance with the old Act as if the old Act had not been repealed.

15 Annual reports for financial year in which transition time occurs

- (1) This item applies:
 - (a) if the transition time occurs during a financial year; and
 - (b) in relation to the matters that would have been covered by the annual report referred to in section 51 of the old Act for the part of the financial year before the transition time if the old Act had not been repealed.
- (2) The first annual report prepared by the new Board under section 77 of the new Act must cover those matters.

Part 5—Miscellaneous

16 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.

17 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:
 - (a) the repeals made by this Act; or
 - (b) the enactment of this Act or the new Act.
- (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;

Schedule 2 Transitional provisions
Part 5 Miscellaneous

- (e) directly amend the text of this Act or the new Act.
- (4) This Schedule (other than subitem (3)) does not limit the rules that may be made for the purposes of subitem (1).
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*[Minister's second reading speech made in—
House of Representatives on 25 May 2023
Senate on 13 June 2023]*

(69/23)