

## EXPLANATORY STATEMENT

Issued by the Authority of the Minister for the Arts

Subject - *Australia Council Act 2013*

*Australia Council Rule 2013*

The *Australia Council Act 2013* (the Act) replaces the *Australia Council Act 1975*, as recommended in the report of the Review of the Australia Council (the Review), which was publicly released on 15 May 2012 by the former Minister for the Arts, the Honourable Simon Crean MP.

The Act received the Royal Assent on 27 June 2013 and commenced by proclamation on 1 July 2013. The Act continues the Australia Council (the Council) as the Australian Government's principal arts funding body and as a body corporate (as established under the *Australia Council Act 1975*). The Act modernises the enabling legislation of the Council by updating the functions, powers and governance structure of the Council in a manner consistent with the Australian Government's response to the Review and the governance arrangements, where appropriate, of other Commonwealth statutory authorities.

Section 52 of the Act provides that the Minister for the Arts may make rules prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 48(1) of the Act provides that rules may prescribe restrictions on certain financial transactions. Such a prescription allows for appropriate controls to be set on overall commitments to particular broad categories of funding.

The purpose of the Rule is to set \$1 million as the prescribed limit above which the Council will require the approval of the Minister to:

- acquire any property, right or privilege exceeding in amount or value the prescribed amount;
- dispose of any property, right or privilege exceeding in amount or value the prescribed amount; and
- enter into a contract for the construction of a building or to pay an amount exceeding the prescribed limit.

Details of the Rule are at [Attachment A](#).

The Statement of Compatibility with Human Rights with respect to this Rule is at [Attachment B](#).

The management of the Australia Council was consulted in the development of this Rule, and agreed that the prescribed threshold is appropriate in the context of the Council's business operations. Broader consultation was unnecessary for this instrument as it is of a minor nature and is in relation to the internal processes of the Council only. The limit prescribed by the Rule is consistent with the limits set by legislative instruments relating to other statutory authorities in the Commonwealth arts portfolio.

The Rule is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Rule commences the day after it is registered.

In the Explanatory Statement the following abbreviations are used:

Act            *Australia Council Act 2013*

Council        The Australia Council

Review        The 2012 Review of the Australia Council

## DETAILS OF THE *AUSTRALIA COUNCIL RULE 2013*

### **Part 1 – Preliminary**

#### Section 1 – Name of Rule

This provides that the name of the Rule is the *Australia Council Rule 2013*.

#### Section 2 – Commencement

This provides that the Sections 1 to 3 of the Rule commence on the day after the Rule is registered. Section 4 and Part 2 commence on the later of the day after the rule is registered and the day on which Section 48 of the *Australia Council Act 2013* commences.

However, the provisions do not commence at all if the *Australia Council Act 2013* does not commence.

#### Section 3 – Authority

Section 3 provides that the Rule is made under the *Australia Council Act 2013*.

#### Section 4 – Definitions

Section 4 provides that in this Rule, ‘Act’ means the *Australia Council Act 2013*.

### **Part 2 – Finance**

#### Section 5 – Restrictions on financial transactions

Section 5 sets the prescribed amount for paragraphs 48(1)(a) to (c) of the Act as \$1 million.

The prescribed limit will not apply to the Council’s ability to make individual funding decisions on an arm’s length basis in relation to the support and promotion of the arts, including the provision of financial assistance and guarantees, as well for the purposes of investment (as per subsection 48(2) of the Act).

The proposed amount of \$1 million reflects the current prescribed amount set for similar statutory authorities in the Commonwealth arts portfolio, such as Screen Australia and the National Portrait Gallery of Australia.

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### Australia Council Rule 2013

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of the Legislative Instrument

Section 52 of the *Australia Council Act 2013* (the Act) provides that the Minister for the Arts may make rules prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 48(1) of the Act provides that rules may prescribe restrictions on certain financial transactions. Such a prescription allows for appropriate controls to be set on overall commitments to particular broad categories of funding.

The purpose of the proposed Rule is to set \$1 million as the prescribed limit above which the Council will require the approval of the Minister to:

- acquire any property, right or privilege exceeding in amount or value the prescribed amount;
- dispose of any property, right or privilege exceeding in amount or value the prescribed amount; and
- enter into a contract for the construction of a building or to pay an amount exceeding the prescribed limit.

#### Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.