

## EXPLANATORY STATEMENT

*Australian National Maritime Museum Act 1990;*  
*National Film and Sound Archive of Australia Act 2008;*  
*National Gallery Act 1975;*  
*National Library Act 1960;*  
*National Museum of Australia Act 1980;*  
*National Portrait Gallery of Australia Act 2012*

### ***National Collecting Institutions Legislation Amendment (Limits on Financial Transactions) Regulations 2021***

Issued by the authority of the Minister for Communications, Urban Infrastructure, Cities and the Arts

#### **Purpose**

The purpose of the *National Collecting Institutions Legislation Amendment (Limits on Financial Transactions) Regulations 2021* (the NCI Amendment Regulations) is to amend each set of the Regulations associated with the enabling legislation of six National Collecting Institutions, to reflect provisions related to financial transactions as amended by the *National Collecting Institutions Legislation Amendment Act 2021* (the NCI Act).

The NCI Act amends the six enabling Acts for each NCI to introduce consistent categories for financial transactions and associated thresholds, and provides that those thresholds will be prescribed in the associated Regulations for each NCI.

The NCI Amendment Regulations amend each Regulation to provide the new appropriate threshold.

#### **Authority**

The Governor-General is empowered to make regulations, not inconsistent with the primary Acts, prescribing matters required or permitted to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the primary Acts under the following provisions:

Section 54 of the *Australian National Maritime Museum Act 1990* (ANMM Act);  
Section 43 of the *National Film and Sound Archive of Australia Act 2008* (NFSA Act);  
Section 46 of the *National Gallery Act 1975* (NGA Act);  
Section 28 of the *National Library Act 1960* (NLA Act);  
Section 44 of the *National Museum of Australia Act 1980* (NMA Act);  
Section 54 of the *National Portrait Gallery of Australia Act 2012* (NPGA Act).

#### **Background**

The NCI Amendment Regulations are required as a consequence of amendments introduced by the *National Collecting Institutions Legislation Amendment Act 2021*.

The enabling legislation for six National Collecting Institutions (NCIs) was variously drafted over five decades between 1960 and 2012. This has resulted in a number of administrative inconsistencies and inefficiencies between each of the Acts.

The purpose of the NCI Act is twofold. Firstly, it will provide the NCIs with broader investment powers than are permitted by the *Public Governance, Performance and Accountability Act 2013*, following requests from the NCIs in relation to managing donated revenue. Secondly, it will address longstanding, but minor, administrative inconsistencies between the six enabling Acts.

The NCI Amendment Regulations deal with the latter, specifically arrangements related to restrictions on financial transactions.

Previously, each of the NCIs was subject to varying restrictions on financial transactions which relate to matters such as acquiring or disposing of collection material; acquiring or disposing of any property, right or privilege; and entering into construction contracts. All NCIs require ministerial approval under their Acts to enter into a transaction above a certain financial threshold, which has previously been specified in the both the primary Act and associated Regulations (ANMM Act, NLA Act, NGA Act and NMA Act), or only in the associated Regulations (NFSA Act and NPGA Act). The NCI Act removes specified thresholds from four Acts and provides for them to be prescribed in the respective Regulations.

Additionally, the NCI Act introduced standardised categories for the sorts of financial transactions above the specified threshold for which ministerial approval is required, namely:

- (a) the acquisition of collection material (as defined variously under each Act);
- (b) the disposal of collection material;
- (c) the acquisition of any property, right and privilege;
- (d) the disposal of any property, right or privilege; and
- (e) the construction of a building.

In addition, it provides that ministerial approval is required for entering into a lease of land for a period exceeding 10 years, under each Act.

The NCI Amendment Regulations provide for the amendment of the following Regulations in order to align the references to the new provisions in each of the primary Acts, and in order to specify new thresholds for financial transactions above which ministerial approval is required:

- (a) *Australian National Maritime Museum Regulations 2018*;
- (b) *National Film and Sound Archive of Australia Regulations 2018*;
- (c) *National Gallery Regulations 2018*;
- (d) *National Library Regulations 2018*;
- (e) *National Museum of Australia Regulations 2000*;
- (f) *National Portrait Gallery of Australia Regulation 2013*.

With the exception of the threshold for the acquisition and disposal of a work of art under the *National Gallery Regulations 2018* (\$10 million), the threshold above which ministerial approval is required for all other Acts remains, or is increased to, \$2 million.

## **Regulatory Impact Analysis**

The amendments have been assessed as machinery in nature, and will have no more than minor regulatory impacts on business, community organisations or individuals (OBPR ref. 25493).

## **Consultation**

The National Collecting Institutions were consulted during the drafting of the *National Collecting Institutions Legislation Amendment Bill 2020* in October and November 2020, but a number of the administrative amendments had been identified by the NCIs over several years.

In preparing the drafting instructions for the Bill, the Department of Infrastructure, Transport, Regional Development and Communications considered issues that had previously been raised by the institutions, or had become apparent over time in the day-to-day work undertaken between the department and institutions. The department sought to accommodate these changes wherever it was possible to do so.

Consultation included specific discussion on the limits to financial transactions. The National Collecting Institutions expressed support for an approach that aligned these provisions and they noted that in practice this will either maintain or increase the thresholds that previously applied under their various Acts. No separate consultation was undertaken on the NCI Amendment Regulations instrument as it updates current Regulations to reflect the agreed amendments.

## **Statement of Compatibility with Human Rights**

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

### ***National Collecting Institutions Legislation Amendment (Limits on Financial Transactions) Regulations 2021***

This Disallowable 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 Disallowable Legislative Instrument**

The *National Collecting Institutions Legislation Amendment (Limits on Financial Transactions) Regulations 2021* (the NCI Amendment Regulations) amend each set of the Regulations associated with the enabling legislation of six National Collecting Institutions, to reflect provisions related to financial transactions as amended by the *National Collecting Institutions Legislation Amendment Act 2021* (the NCI Act).

The enabling Acts of the six institutions are:

- (a) *Australian National Maritime Museum Regulations 2018*;
- (b) *National Film and Sound Archive of Australia Regulations 2018*;
- (c) *National Gallery Regulations 2018*;
- (d) *National Library Regulations 2018*;
- (e) *National Museum of Australia Regulations 2000*;
- (f) *National Portrait Gallery of Australia Regulation 2013*.

The NCI Act amends these Acts to introduce consistent categories for financial transactions and associated thresholds, and provides that those thresholds will be prescribed in the associated Regulations.

The NCI Act introduced standardised categories for the sorts of financial transactions, above the specified threshold, for which ministerial approval is required, namely:

- (a) the acquisition of collection material (as defined variously under each Act);
- (b) the disposal of collection material;
- (c) the acquisition of any property, right and privilege;
- (d) the disposal of any property, right or privilege; and
- (e) the construction of a building.

These thresholds have previously been specified in the both the primary Act and associated Regulations (for the ANMM Act, NLA Act, NGA Act and NMA Act), or only in the associated Regulations (for the NFSA Act and NPGA Act). The NCI Act removes specified thresholds from four Acts and provides for them to be prescribed in the respective Regulations.

With the exception of the threshold for the acquisition and disposal of a work of art under the *National Gallery Regulations 2018* (\$10 million), the threshold above which ministerial approval is required for all other Acts remains, or is increased to, \$2 million.

**Human rights implications**

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

**Conclusion**

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

## **Notes on Sections**

### **Section 1 – Name**

This section names the *National Collecting Institutions Legislation Amendment (Limits on Financial Transactions) Regulations 2021*.

### **Section 2 – Commencement**

This section provides that the Regulations commence at the same time as the *National Collecting Institutions Legislation Amendment Act 2021* commences.

### **Section 3 – Authority**

This section provides that the Regulations are made under the following Acts:

- (a) *Australian National Maritime Museum Act 1990*;
- (b) *National Film and Sound Archive of Australia Act 2008*;
- (c) *National Gallery Act 1975*;
- (d) *National Library Act 1960*;
- (e) *National Museum of Australia Act 1980*;
- (f) *National Portrait Gallery of Australia Act 2012*.

### **Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to the NCI Amendment Regulations is amended or repealed as set out in the applicable items in that Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1 - Amendments**

### ***Australian National Maritime Museum Regulations 2018***

#### **Item 1 – Parts 2 and 3**

This item Repeals Parts 2 and 3 of the *Australian National Maritime Museum Regulations 2018* (ANMM Regulations) and substitutes a new Part 2. Part 2 of the current ANMM Regulations relates to the disposal of material in the national maritime collection and Part 3 relates to entering into contracts.

Part 2 as introduced by the Amendment Regulations relates to financial transactions.

It includes *Section 6 - Restrictions on financial transactions* which prescribes the amount of \$2 million, for the purposes of paragraphs 47(1)(a) to (e) of the *Australian National Maritime Museum Act 1990* (ANMM Act). Paragraphs 47(1)(a) to (e) of the ANMM Act, as amended by the NCI Act provide the financial transactions for which ministerial approval is required above the threshold specified in the Regulations. This amendment is the consequence of the standardisation of categories of financial transactions for which ministerial approval is required over a specified financial threshold across all of the National Collecting Institutions legislation including: (a) acquiring collection material (however defined in the primary Act), (b) disposing of collection material, (c) acquiring any property, right or privilege, (d)

disposing of any property, right or privilege or (e) entering into a contract for the construction of a building.

It also introduces *Section 7 - Value of maritime historical material* which provides for the way in which the value of maritime historical material is to be determined.

The amendments to the ANMM Act made by the NCI Act, in conjunction with the amendments to the ANMM Regulations to be made by section 6, discussed above, will have the effect of increasing the threshold for the disposal of collection material without requiring the Minister's approval from an amount that exceeds \$20,000 to an amount that exceeds \$2 million.

The changes proposed by subsection 7(1) preserve the requirement that one or more independent experts are appointed in writing by the Director to determine the value of relevant maritime historical material. The changes proposed by subsection 7(2) preserve the requirement that the Director is satisfied on reasonable grounds that the person appointed under subsection 7(1) has the appropriate qualifications or expertise to determine the value of the maritime historical material.

This amendment is the consequence of standardised provisions for the sorts of financial transactions for which ministerial approval is required over the specified amount across all of the NCI legislation as discussed above.

### ***National Film and Sound Archive of Australia Regulations 2018***

#### **Item 2 – Section 6**

This item relates to restrictions on financial transactions as provided for by Section 39 of the *National Film and Sound Archive Act 2008* (NFSA Act). The existing Section 6 of the *National Film and Sound Archive Regulations 2018* (NFSA Regulations) specifies a financial threshold of \$2 million to apply to transactions related to the acquisition and disposal of any property, right or privilege (paragraphs 39(1)(a) and (b)), and the entering into contracts for the construction of a building (paragraph 39(1)(c)).

This item omits “paragraphs 39(1)(a) to (c)” and substitutes them with “paragraphs 39(1)(a) to (e)”. This amendment is the consequence of standardised provisions for the sorts of financial transactions for which ministerial approval is required over the specified amount across all of the NCI legislation as discussed above.

### ***National Gallery Regulations 2018***

#### **Item 3 – Subsection 6(1)**

This item relates to restrictions on financial transactions as provided by section 38 of the *National Gallery Act 1975* (the NGA Act). Part 2 of the *National Gallery Regulations 2018* (the NGA Regulations) currently provides financial thresholds for the purchase and disposal of assets above which ministerial approval is required.

Currently, the NGA Regulations provides for a threshold of \$10million which applies to paragraph 38(1)(a) which relates to the acquisition of a work of art. This item amends subsection 6(1) by omitting “paragraph 38(a)” and substituting “38(1)(a) and (b)”. This preserves the threshold above which ministerial approval is required for the purchase of a work of art at \$10 million, and adds a new reference related to the disposal of a work of art

that exceeds \$10 million, to align with the amendments to section 38 of the NGA Act made by the NCI Act.

This amendment follows an amendment to the NGA Act to introduce common categories of financial transactions for each of the NCIs. Previously, all disposals of works of art, regardless of value, required ministerial approval. The threshold of \$10 million is uniquely applied to the National Gallery of Australia in relation to the acquisition and disposal of its collection material. For the acquisition and disposal of any property, right or privilege, and entering into a contract for a building a threshold of \$2 million is applied, as discussed below.

#### Item 4 – Subsection 6(2)

This item also relates to restrictions on financial transactions as provided by section 38 of the NGA Act. This item amends subsection 6(2) by omitting references to paragraphs 38(b), (c) and (d) and substituting with paragraphs 38(1)(c),(d) and (e). This has the effect of providing that a ministerial approval is required for the acquisition or disposal of any property, right or privilege other than a work of art and for entry into a contract for the construction of a building for the Gallery where the amount exceeds \$2 million.

### ***National Library Regulations 2018***

#### Item 5 – Section 6

This item relates to restrictions on financial transactions as provided by section 24 of the *National Library Act 1960* (the NLA Act), as introduced by the NCI Act.

Part 2 of the *National Library Regulations 2018* (the NLA Regulations) currently provides a financial threshold for the purchase and disposal of assets above which ministerial approval is required. Section 6 of the NLA Regulations currently provides for a threshold of \$2 million for the purposes of paragraphs 7A(1)(a),(b) and (c) of the NLA Act. This item omits “paragraphs 7A(1)(a),(b) and (c)” and substitutes “paragraphs 24(1)(a) to (e)”.

This preserves the threshold above which ministerial approval is required for the acquisition of library material at \$2 million but amends the references in the NLA Regulations to align with amendments to the NLA Act as provided by the NCI Act. This amendment is the consequence of standardised provisions for financial transactions across all of the NCI legislation, as discussed above.

### ***National Museum of Australia Regulations 2019***

#### Item 6 – Part 2

Part 2 of the *National Museum of Australia Regulations 2019* (the NMA Regulations) currently provides a financial threshold for entering into contracts, above which ministerial approval is required. Section 6 provides for a threshold of \$2 million for the purposes of paragraphs 37(a) and (b) of the *National Museum of Australia Act 1980*.

This item omits “paragraphs 37(a) and (b)” and substitutes “paragraphs 37(1)(a) to (e)”. This preserves the threshold above which ministerial approval is required for the purchase of



historical material (as defined by the NMA Act) at \$2 million but amends the references in the NMA Regulations to align with amendments to the NMA Act as provided by the NCI Act.

This amendment to the NMA Regulations addresses the amendments to the NMA Act which changes the categories of financial transactions for which ministerial approval is required above the set threshold from a) the acquisition of historical material and b) acquisition of all other, to include the a) acquisition of historical material, b) disposal of historical material, c) acquisition of any property, right or privilege, d) disposal of any property right or privilege, and e) entering into contracts for the construction of a building. The amendments have the effect of specifying \$2 million as the threshold for these transactions above which ministerial approval is required.

### ***National Portrait Gallery of Australia Regulation 2013***

#### **Item 7 – Section 5**

Section 5 – *Restrictions on financial transactions* of the *National Portrait Gallery of Australia Regulations 2013* (the NPGA Regulations) currently provides a financial threshold for entering into contracts, above which ministerial approval is required. Section 5 provides for a threshold of \$1 million for the purposes of paragraphs 47(1)(a), (b) and (c) of the *National Portrait Gallery of Australia Act 2012*.

This item repeals section 5 and substitutes new section 5 to reflect amendments to the NPGA Act made by the NCI Act. It provides that for the purposes of paragraphs 47(1)(a) to (e) of the Act, \$2,000,000 is prescribed.

It has the effect of increasing the threshold for which ministerial approval is required from \$1 million to \$2 million to be consistent with other NCI legislation. This increases the threshold above which ministerial approval is required for the a) acquisition of any portrait, another work or related material, b) disposal of any portrait, another work or related material, c) acquisition of any property, right and privilege, d) disposal of any property right and privilege, and e) entering into contracts for the construction of a building. It amends the references in the NPGA Regulations to align with amendments to the NPGA Act as provided by the NCI Act.