



National Portrait Gallery of Australia (Consequential and Transitional Provisions) Act 2012

No. 149, 2012

**An Act to deal with consequential and transitional
matters in connection with the *National Portrait
Gallery of Australia Act 2012*, and for related
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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[Assented to 6 November 2012]

The Parliament of Australia enacts:

National Portrait Gallery of Australia (Consequential and Transitional Provisions) Act 2012

No. 149, 2012 1

1 Short title

This Act may be cited as the *National Portrait Gallery of Australia (Consequential and Transitional Provisions) Act 2012*.

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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	6 November 2012
2. Schedules 1 and 2	At the same time as the <i>National Portrait Gallery of Australia Act 2012</i> commences.	1 July 2013

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Archives Act 1983

1 Subsection 3(1) (at the end of paragraphs (a) and (b) of the definition of *exempt material*)

Add “or”.

2 Subsection 3(1) (paragraph (c) of the definition of *exempt material*)

Omit “Australian National Gallery;”, substitute “National Gallery of Australia; or”.

3 Subsection 3(1) (after paragraph (c) of the definition of *exempt material*)

Insert:

(ca) material included in the national collection maintained by the National Portrait Gallery of Australia; or

4 Subsection 3(1) (paragraph (d) of the definition of *exempt material*)

Omit “Museum of Australia”, substitute “National Museum of Australia”.

Schedule 2—Transitional provisions

Part 1—Definitions

1 Definitions

In this Schedule:

asset means:

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

assets official, in relation to an asset, means the person or authority who, under a law of the Commonwealth, a State or a Territory, or under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

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

National Portrait Gallery program means the program:

- (a) that was administered by the Commonwealth immediately before the transition time; and
- (b) that was generally known as the National Portrait Gallery.

transition time means the commencement of this Schedule.

Part 2—Transfer of assets and liabilities

2 Transfer of assets from Commonwealth to National Portrait Gallery of Australia

- (1) This item applies to the assets of the Commonwealth immediately before the transition time that are for the purposes of the National Portrait Gallery program.
- (2) Subitem (1) does not apply to land or buildings, but does apply to structures or other improvements on land.
- (3) At the transition time, the assets to which this item applies cease to be assets of the Commonwealth and become assets of the National Portrait Gallery of Australia without any conveyance, transfer or assignment. The Gallery becomes the successor in law in relation to the assets.

Assets subject to trust

- (4) If an asset vests in the National Portrait Gallery of Australia under this item and the asset was, immediately before the transition time, held by the Commonwealth on trust, that asset is taken, at and after that time, to be held by the Gallery on trust and subject to the terms of the trust on which the asset was so held by the Commonwealth.

Exception

- (5) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified asset (including structures or other improvements on land).

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (6) A determination made under subitem (5) is not a legislative instrument.

3 Transfer of liabilities from Commonwealth to National Portrait Gallery of Australia

- (1) This item applies to the liabilities of the Commonwealth immediately before the transition time that are for the purposes of the National Portrait Gallery program.

Schedule 2 Transitional provisions

Part 2 Transfer of assets and liabilities

- (2) At the transition time, the liabilities cease to be liabilities of the Commonwealth and become liabilities of the National Portrait Gallery of Australia without any conveyance, transfer or assignment. The Gallery becomes the successor in law in relation to the liabilities.
- (3) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified liability.
- Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.
- (4) A determination made under subitem (3) is not a legislative instrument.

4 Other transfers of assets and liabilities

- (1) This item applies in relation to assets and liabilities of the Commonwealth that relate to the National Portrait Gallery program, other than:
- (a) assets or liabilities to which item 2 or 3 applies; or
 - (b) land or buildings.
- (2) The Minister may, in writing, make a declaration that:
- (a) a specified asset or liability vests in the National Portrait Gallery of Australia at a specified time (that is at or after the transition time) without any conveyance, transfer or assignment; and
 - (b) the National Portrait Gallery of Australia becomes the successor in law in relation to that asset or liability at that specified time.
- Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.
- (3) A declaration under subitem (2) has effect accordingly.
- (4) A declaration under subitem (2) is not a legislative instrument.

Assets subject to trust

- (5) If, at a particular time, an asset vests in the National Portrait Gallery of Australia under a declaration under subitem (2) and the asset was, immediately before that time, held by the Commonwealth on trust, that asset is taken, at and after that time, to be held by the Gallery on trust and subject to the terms of the trust on which the asset was so held by the Commonwealth.

5 Certificates relating to vesting of assets

- (1) This item applies if:
 - (a) any asset vests in the National Portrait Gallery of Australia under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the National Portrait Gallery of Australia under this Part.
- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

Part 3—Transfer of other matters

6 Legal proceedings of the Commonwealth

- (1) This item applies if:
 - (a) any proceedings to which the Commonwealth was a party were pending in any court or tribunal immediately before the transition time; and
 - (b) the proceedings:
 - (i) relate to an asset or liability that, as a result of the operation of item 2, 3 or 4, becomes an asset or liability of the National Portrait Gallery of Australia; or
 - (ii) otherwise relate to the National Portrait Gallery program.
- (2) The National Portrait Gallery of Australia is substituted for the Commonwealth, from the transition time, as a party to the proceedings.

7 References in certain instruments to the Commonwealth

- (1) This item applies if:
 - (a) an instrument was in force immediately before the transition time; and
 - (b) the instrument contains a reference to the Commonwealth and the reference:
 - (i) relates to an asset or liability that, as a result of the operation of item 2, 3 or 4, becomes an asset or liability of the National Portrait Gallery of Australia; or
 - (ii) otherwise relates to the National Portrait Gallery program.
- (2) The instrument has effect, from the transition time, as if the reference to the Commonwealth were a reference to the National Portrait Gallery of Australia.
- (3) The Minister may, by writing, determine that subitem (1) does not apply in relation to a specified reference.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (4) A determination made under subitem (3) is not a legislative instrument.
-

- (5) In this item:
enterprise agreement has the same meaning as in the *Fair Work Act 2009*.
instrument includes a contract or agreement, but does not include a contract of employment or an enterprise agreement.

Part 4—Staff

8 Transitional—employees of the National Portrait Gallery of Australia

Transferring employees

- (1) For the purposes of this item, a person is a *transferring employee* if:
- (a) the person was an APS employee in the Department immediately before the transition time; and
 - (b) the person is covered by a determination that:
 - (i) is made under section 72 of the *Public Service Act 1999*; and
 - (ii) causes the person, at the transition time, to become an APS employee in the National Portrait Gallery of Australia.
- (2) If:
- (a) a person is a transferring employee; and
 - (b) immediately before the transition time, the designated agreement applied to the person's employment in the Department;
- then:
- (c) the designated agreement (as in force immediately before the transition time) covers the Commonwealth and the transferring employee in relation to the transferring employee's employment in the National Portrait Gallery of Australia; and
 - (d) the designated agreement has effect after the transition time, in relation to the transferring employee's employment in the National Portrait Gallery of Australia, as if it had been made by the Director of the Gallery on behalf of the Commonwealth; and
 - (e) if:
 - (i) an enterprise agreement commences after the transition time; and

- (ii) the enterprise agreement was made by the Director of the National Portrait Gallery of Australia on behalf of the Commonwealth; and
 - (iii) the enterprise agreement covers the Commonwealth and the transferring employee in relation to the transferring employee's employment in the National Portrait Gallery of Australia;
- paragraphs (c) and (d) cease to apply in relation to the transferring employee when the enterprise agreement commences.

(3) If:

- (a) a person is a transferring employee; and
- (b) immediately before the transition time, a determination under subsection 24(1) of the *Public Service Act 1999* applied to the person's employment in the Department;

then:

- (c) the determination (to the extent to which it relates to the transferring employee) has effect after the transition time, in relation to the transferring employee's employment in the National Portrait Gallery of Australia, as if:
 - (i) the determination had been made by the Director of the National Portrait Gallery of Australia; and
 - (ii) the determination were applicable to the person's employment in the National Portrait Gallery of Australia; and
- (d) paragraph (c) does not prevent the variation or revocation of the determination.

New employees

(4) For the purposes of this item, a person is a ***new employee*** if:

- (a) the person is an APS employee in the National Portrait Gallery of Australia; and
- (b) the person is not a transferring employee.

(5) If:

- (a) the designated agreement covers the Commonwealth because of subitem (2); and

- (b) after the transition time, a person becomes a new employee; and
- (c) the designated agreement would have covered the Commonwealth and the new employee in relation to the new employee's employment in the Department if the new employee had been an APS employee at the same level in the Department immediately before the transition time; and
- (d) the Director of the National Portrait Gallery of Australia, by written notice given to the new employee before or within 14 days after the person becomes a new employee, determines that the designated agreement is applicable to the new employee for the purposes of this subitem from the time when the person becomes a new employee;

then:

- (e) the designated agreement (as in force immediately before the transition time) covers the Commonwealth and the new employee in relation to the new employee's employment in the National Portrait Gallery of Australia; and
- (f) the designated agreement has effect after the transition time, in relation to the new employee's employment in the National Portrait Gallery of Australia, as if it had been made by the Director of the Gallery on behalf of the Commonwealth; and
- (g) if:
 - (i) an enterprise agreement commences after the transition time; and
 - (ii) the enterprise agreement was made by the Director of the National Portrait Gallery of Australia on behalf of the Commonwealth; and
 - (iii) the enterprise agreement covers the Commonwealth and the new employee in relation to the new employee's employment in the National Portrait Gallery of Australia;paragraphs (e) and (f) cease to apply in relation to the new employee when the enterprise agreement commences.

Delegation

- (6) The Director of the National Portrait Gallery of Australia may, in writing, delegate the power conferred by paragraph (5)(d) to:

- (a) a person who is:
 - (i) a member of the staff of the Gallery; and
 - (ii) an SES employee or acting SES employee; or
- (b) a person who is:
 - (i) a member of the staff of the Gallery; and
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2 position or an equivalent position.

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

Determination is not a legislative instrument

- (7) A determination made under paragraph (5)(d) is not a legislative instrument.

Definitions

- (8) In this item:
 - commence*, in relation to an enterprise agreement, means begin to operate.
 - covers* has the same meaning as in the *Fair Work Act 2009*.
 - designated agreement* means the agreement known as *The Department of Regional Australia, Regional Development and Local Government enterprise agreement 2011*.
 - enterprise agreement* has the same meaning as in the *Fair Work Act 2009*.

9 Transitional—regulations relating to the transfer of APS employees to the National Portrait Gallery of Australia

The Governor-General may make regulations providing for matters of a transitional nature in relation to the transfer of APS employees from the Department to the National Portrait Gallery of Australia.

10 Separate agreements relating to employment

- (1) If, under either or both of subitems 8(2) and (5), the designated agreement covers the Commonwealth and one or more employees in relation to their employment in the National Portrait Gallery of Australia, the *Fair Work Act 2009* and the *Fair Work (Transitional*

Schedule 2 Transitional provisions
Part 4 Staff

Provisions and Consequential Amendments) Act 2009 have effect as if the following were separate agreements:

- (a) the designated agreement, so far as it has the coverage mentioned in this item;
- (b) the designated agreement, so far as it does not have the coverage mentioned in this item.

Definitions

- (2) In this item:

covers has the same meaning as in the *Fair Work Act 2009*.

designated agreement means the agreement known as *The Department of Regional Australia, Regional Development and Local Government enterprise agreement 2011*.

Part 5—Other matters

11 Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) An *exempt matter* is:
 - (a) the vesting of an asset or liability under this Schedule; or
 - (b) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) A certificate under subitem (3) is not a legislative instrument.

12 National Portrait Gallery Special Account

- (1) At the transition time, the Special Account established under subsection 20(1) of the *Financial Management and Accountability Act 1997* with the name “National Portrait Gallery Special Account” is abolished.
- (2) If an amount (the *old amount*) stands to the credit of that Special Account immediately before the transition time, there is payable to the National Portrait Gallery of Australia, at the transition time, an amount equal to the old amount.
- (3) The amount payable to the National Portrait Gallery of Australia under subitem (2) is to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

13 Constitutional safety net

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, 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 a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this item:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

14 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

15 Acting Director

If:

- (a) at the transition time, the Minister has not appointed a person as the Director of the National Portrait Gallery of Australia; and
- (b) at the transition time, the Minister has not appointed at least 3 members of the Board of the National Portrait Gallery of Australia;

then, until the Minister has appointed at least 3 members of that Board, the reference in subsection 33(1) of the *National Portrait Gallery of Australia Act 2012* to the Board is taken to be a reference to the Minister.

16 Delegation by Minister

(1) The Minister may, by writing, delegate all or any of his or her powers under this Schedule to:

- (a) the Secretary of the Department; or
- (b) an SES employee, or acting SES employee, in the Department.

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

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.

17 Regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the enactment of this Act or the *National Portrait Gallery of Australia Act 2012*.

[*Minister's second reading speech made in—
House of Representatives on 23 August 2012
Senate on 12 September 2012*]

(139/12)

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