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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**NATIONAL COLLECTING INSTITUTIONS LEGISLATION AMENDMENT BILL
2020**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications, Cyber Safety and the Arts,
the Hon Paul Fletcher MP)

NATIONAL COLLECTING INSTITUTIONS LEGISLATION AMENDMENT BILL 2020

OUTLINE

The purpose of the National Collecting Institutions Legislation Amendment Bill 2020 (the Bill) is to amend the enabling legislation of six National Collecting Institutions (NCIs) to provide them with broader investment powers than are currently permitted by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), improve efficiencies and address longstanding, but minor, administrative inconsistencies between the six Acts.

The Acts which will be amended by the Bill are as follows:

Australian National Maritime Museum Act 1990 (ANMM Act)
National Film and Sound Archive of Australia Act 2008 (NFSA Act)
National Gallery Act 1975 (NGA Act)
National Library Act 1960 (NLA Act)
National Museum of Australia Act 1980 (NMA Act)
National Portrait Gallery of Australia Act 2012 (NPGA Act)

The PGPA Act governs how Corporate Commonwealth Entities may invest funds but makes no distinction between funds received from government or those sourced from other parties. This means the investment of donated revenue to the NCIs, directly or through their established foundations, is currently restricted to low risk (and hence low return) options. These restrictions act as a disincentive to donors, as institutions are unable to generate competitive rates of return on donated funds, reducing potential value for money. Schedule 1 to the Bill will provide NCIs with powers to develop an investment policy for donated revenue and invest for the long-term benefit and improved financial sustainability of those institutions. “Donated revenue” in this document includes funds received by donation, gift or bequest, interest earned on those funds, and funds received from the disposal of gifts.

Schedule 2 to the Bill also makes administrative amendments to address certain inconsistencies between the enabling Acts for each NCI. These amendments seek to modernise and better streamline the legislation to improve efficiency and productivity. They include provisions to standardise delegation powers, the power to appoint a person as an acting member of a governing body, and the maximum length of service for members (which will include any period of acting); remove ministerial approval requirements related to routine financial transactions and asset disposals; and remove reporting requirements that are either inconsistent with the other NCI related Acts or superfluous since the introduction of the PGPA Act.

Financial impact statement

The Bill is not expected to have any significant impact on Commonwealth expenditure or revenue.

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 Bill 2020

This Bill 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 Bill

The purpose of the Bill is to amend the enabling legislation of six National Collecting Institutions (NCIs) to enable broader investment powers than those currently permitted by the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act) for donated revenue.

The amendments will provide NCIs with powers to maximise donated revenues through investment types that yield greater returns, supporting improved financial sustainability and delivering long-term benefits to those institutions. This focus of actively seeking philanthropic support aligns with the Government's broader position of encouraging NCIs to increase their financial sustainability through non-government sources of funding.

The Bill also makes administrative amendments to address certain inconsistencies between the enabling Acts of each NCI. These amendments seek to modernise and better streamline the legislation to improve efficiency and productivity. They include provisions to standardise delegation powers and the maximum length of service for governing body members; remove ministerial approval requirements related to routine financial transactions and asset disposals; and to remove reporting requirements that are superfluous since the introduction of the PGPA Act.

The Acts within scope are:

Australian National Maritime Museum Act 1990 (ANMM Act)
National Film and Sound Archive of Australia Act 2008 (NFSA Act)
National Gallery Act 1975 (NGA Act)
National Library Act 1960 (NLA Act)
National Museum of Australia Act 1980 (NMA Act)
National Portrait Gallery of Australia Act 2012 (NPGA Act)

Human rights implications

The Bill engages with the following rights:

- Right to enjoy and benefit from culture in Article 27 of the *International Convention on Civil and Political Rights* (ICCPR);
- Right of all persons to take part in cultural life in Article 15 of the *International Convention on Economic, Social and Cultural Rights* (ICESCR); and

- Right to work in Article 6 of the ICESCR

Right to enjoy and benefit from culture

Article 27 of the ICCPR and Article 15 of the ICESCR recognise the right to participate in, enjoy and benefit from cultural life. The Bill promotes the realisation of this right by supporting the financial sustainability of six major public cultural organisations and their capacity to deliver a wide range of cultural opportunities and experiences for the benefit of all audiences.

The National Collecting Institutions are at the heart of Australian cultural life, its national memory and identity. They each conserve, interpret and facilitate engagement with our history, culture and national identity. They provide world-class venues, exhibitions and resources for all Australians and extend access to collections for people living in rural, regional and remote areas through digital access, touring and outreach programs.

The powers provided by the Bill to these institutions to develop an investment policy for donated revenues and invest accordingly will enable them to increase their financial sustainability through non-government sources of funding, for the long-term benefit and enrichment of those institutions, their audiences and their employees.

Right to work

Article 6 of the ICESCR recognises the right to work. The Bill promotes the realisation of the right to work by supporting the financial sustainability of six major public cultural organisations which provide important employment opportunities for museum and gallery professionals and support staff.

The National Collecting Institutions are a significant employer within the cultural sector. Within the institutions themselves they provide unique employment opportunities, from specialist and technical roles at the highest professional levels, to a broad range of ancillary roles through associated operations and commercial enterprises. More broadly, they support contemporary cultural practice and inspire future generations of artists, historians, film-makers and story-tellers.

Conclusion

The Bill is compatible with human rights because it promotes the protection of human rights.

NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 provides that the Bill, when enacted, may be cited as the *National Collecting Institutions Legislation Amendment Act 2020*.

Clause 2: Commencement

2. Clause 2 provides for the Act to commence on a single date 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.

Clause 3: Schedules

3. Clause 3 provides that legislation that is specified in a Schedule to the Bill is amended or repealed as set out in the applicable Items in that Schedule, and any other Item in a Schedule has effect according to its terms. There are two Schedules to this Bill.

SCHEDULE 1 - Investments

4. Schedule 1 introduces amendments to the enabling legislation for six National Collecting Institutions (NCIs) to permit broader types of investment of donated revenues than is otherwise permitted by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Australian National Maritime Museum Act 1990 (ANMM Act)

Item 1- Subsection 45(2)

5. Item 1 would amend subsection 45(2) of the ANMM Act to provide for an additional exception to the limits on how the money of the Australian National Maritime Museum (ANMM) may be applied, as outlined in subsection 45(1). Subsection 45(1) provides that the money of the ANMM may only be applied in payment or discharge of the costs incurred by the ANMM in the performance of its functions or the exercise of its powers and in payment of remuneration and allowances to any person under that Act.
6. Subsection 45(2) provides an exception to the requirement in subsection 45(1) and enables the ANMM to invest money, that is not immediately required for the purposes of the ANMM, in accordance with section 59 of the PGPA Act. Section 59(1) of the PGPA Act governs how Commonwealth Corporate Entities may invest funds. It provides that investments of relevant money for which the entity is responsible are not permitted unless the money is not immediately required for the purposes of the entity, and the investment is in bank deposits; securities guaranteed by the Commonwealth, State or Territory; other investments approved by the Minister for Finance; or any other form of investment prescribed by the Rules.

7. Item 1 would provide that money of the ANMM that is not immediately required for the purposes of the ANMM may also be invested in accordance with subsection 45(3). The details of subsection 45(3) are introduced by Item 2.

Item 2 - At the end of section 45

8. Item 2 would add subsections 45(3) and 45(4). Subsection 45(3) describes the categories of money that the ANMM may invest otherwise than in accordance with section 59 of the PGPA Act provided that money is not immediately required for the purposes of the ANMM. Subsection 45(3) allows money accepted as a bequest or a gift; money derived from the disposal of property that has been given, devised, bequeathed or assigned to the ANMM other than by the Commonwealth, or money received from an investment made under subsection 45(3) or from the disposal of such an investment, to be invested in any form of investment. This would expand the range of investment options available to the ANMM for such money, some of which may support greater returns than those permitted by the PGPA Act. A note to subsection 45(3) refers to subsection 50(2) for obligations of the ANMM as a trustee of a trust. It is intended that subsection 45(3) would also apply to moneys received by any foundation associated with the ANMM.
9. Subsection 45(4) would require that an investment under subsection 45(3), or disposal of such an investment, must be made in accordance with an investment policy in force under section 46, as provided for by Item 3.
10. All other revenue of the ANMM, including moneys appropriated to the ANMM by the Parliament as well as own-source revenue from retail and commercial activities, would remain subject to section 59 of the PGPA Act and therefore not in scope for broader investment.
11. It is also intended that donated revenue or other property held by the ANMM on trust, or accepted by the ANMM subject to a condition, should not be able to be dealt with except in accordance with the obligations of the ANMM as trustee of the trust or as the person who has accepted the money or other property subject to the condition, as the case may be, provided by subsection 50(2).
12. Most NCIs actively undertake fundraising activities, in some cases through foundation bodies established for such purposes, to support the operations of the institution. The intention is that the provisions of the Bill would equally apply to subsidiaries of the NCIs, including foundations established as separate legal entities. This focus of actively seeking philanthropic support aligns with the Government's broader position of encouraging NCIs to increase their financial sustainability through non-government sources of funding. Those NCIs without foundations may still receive philanthropic support by trust, or directly as cash.
13. The PGPA Act makes no distinction, however, between the investment of funds received from government or those sourced from other parties. This means the investment of donated revenue received by the NCIs, directly or through their foundations, is restricted to low risk (and hence low return) options. These restrictions act as a disincentive to donors as institutions are unable to generate competitive rates of return on donated funds, reducing potential value for money.

14. The Bill does not seek to compel the ANMM or any other NCI to undertake broadened investment activity. The provisions would not rely on a separate foundation being established by the NCI for investment purposes, but would apply equally to separate foundations where these are established.

Item 3 - After section 45

15. Item 3 inserts section 46 which relates to an investment policy which investments under subsection 45(3) or the disposal of such investments must accord with. Subsection 46(1) would provide that the ANMM Council may formulate a written policy which outlines: the investment strategy of the ANMM; benchmarks and standards for assessing the performance of the ANMM's investments; and risk management of such investments. It also notes that for variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901* (AI Act).
16. If an investment policy is formulated under subsection 46(1), subsection 46(2) would require that a copy must be published on the website of the ANMM; subsection 46(3) would require the Council to conduct periodic reviews of the policy; subsection 46(4) would require the ANMM to comply with the policy; and subsection 46(5) would prevent a transaction being rendered invalid by a failure to comply with the policy.
17. Investing beyond the limitations established by the PGPA Act would be at the discretion of the governing bodies of each of the NCIs. Where an NCI opts to invest, the Bill would require the development of an investment policy. Governing bodies, as the Accountable Authorities, would have ultimate responsibility for the formulation and review of, and compliance with, the investment policy of their institution and any investment decisions undertaken in accordance with their investment policies.
18. The publication of the investment policy on the respective NCI's website would provide a measure of transparency. There is no prescription for the formulation of policies other than what would be required to meet the provisions of section 46. Details of investments would not be required to be published. Investments would be reported as part of the NCI's financial statements in its annual report.
19. Subsection 46(6) provides that an investment policy is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.

National Film and Sound Archive of Australia Act 2008 (NFSA Act)

Items 4-6

20. Items 4-6 would apply to the NFSA Act in a like manner as Items 1-3 would apply to the ANMM Act.
21. Subsection 38A(6) would provide that an investment policy is not a legislative instrument. This provision is included to assist readers. The provision would be

declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.

National Gallery Act 1975 (NGA Act)

Items 7-9

22. Items 7-9 would apply to the NGA Act in a like manner as Items 1-3 would apply to the ANMM Act.
23. Subsection 37A(6) would provide that an investment policy is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.

National Library Act 1960 (NLA Act)

Items 10-12

24. Items 10-12 would apply to the NLA Act in a like manner as Items 1-3 would apply to the ANMM Act.
25. Subsection 23(6) would provide that an investment policy is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.

National Museum of Australia Act 1980 (NMA Act)

Items 13-15

26. Items 13-15 would apply to the NMA Act in a like manner as Items 1-3 would apply to the ANMM Act.
27. Subsection 36(6) would provide that an investment policy is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.

National Portrait Gallery of Australia Act 2012 (NPGA Act)

Items 16-18

28. Items 16-18 would apply to the NPGA Act in a like manner as Items 1-3 would apply to the ANMM Act.
29. Subsection 46A(6) would provide that an investment policy is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.

Item 19 - Schedule 1 - Application provision

30. Item 19 would provide that the amendments made by Schedule 1 apply in relation to (a) money accepted as a gift or bequest before, on or after the commencement of this Item; and money received from the disposal of property, before, on or after that commencement of the Item. This would enable the broader investment of donated revenue in accordance with amendments made by the Bill of these sorts of money even if already held by the NCI, and even if it has yet to be accepted or received prior to commencement of the Bill.

SCHEDULE 2 - Other amendments

Australian National Maritime Museum Act 1990 (ANMM Act)

Item 1 - Subsection 8(6)

31. Item 1 repeals subsection 8(6) of the ANMM Act. Subsection 8(6) provides that the Minister may, by writing signed by him or her, delegate, to the person holding or performing the duties of the office of Secretary of the Department, all or any of the Minister's powers under section 8 of the Act, which relate to making land controlled by the Commonwealth available to the ANMM or transferring maritime historical material or other goods and equipment owned by the Commonwealth to the ANMM.
32. The ability for the Minister to delegate powers varies across the enabling legislation of each of the six NCIs. The powers provided by subsection 8(6) are not available under the other NCI Acts. The Bill seeks to align delegation provisions across the six Acts.
33. Item 1 would bring the ANMM Act into alignment with the Acts of the other NCIs under which the Minister does not have the power to delegate powers related to making land available (subsection 53A).
34. A broader power for the Minister to delegate certain other powers under the ANMM Act would be introduced by section 53B discussed below under Item 11.

Item 2 - Subsections 10(4) and (5)

35. Item 2 repeals subsections 10(4) and 10(5) of the ANMM Act, which relate to the disposal of material included in the national maritime collection, including the requirement to seek ministerial approval for the disposal of such material if its value exceeds \$20,000, and the requirement for the ANMM Council to include in each ANMM annual report the particulars of any disposals of material during the period, and would substitute:
 - a) a new subsection 10(4) which provides that if the Council has determined that material included in the national maritime collection be disposed of, the Museum may dispose of that material accordingly. The note to subsection 10(4) notes that particulars of any such disposals must be included in the annual report (see section 48 as amended by Item 10).
 - b) a new subsection 10(5) which provides that subsection 10(4) would be subject to section 47- Restrictions on financial transactions (Item 9).

36. Each of the NCIs is subject to varying restrictions on financial transactions relating to disposing of property. All NCIs require ministerial approval under their enabling legislation, to enter into a transaction above a specified financial threshold. The financial value thresholds for the disposal of collection material above which the Minister's approval is required currently vary across the primary Acts or associated Regulations of each NCI. The National Film and Sound Archive of Australia Regulations 2018 and NLA Act specify an amount of \$2 million, the National Portrait Gallery of Australia Regulation 2013 specifies \$1 million, the NMA Act specifies \$250,000, the ANMM Act specifies \$20,000, and all disposals regardless of value require ministerial approval under the NGA Act.
37. The Bill seeks to introduce a more consistent threshold for all NCI disposals, which would be prescribed in the associated Regulations for each NCI. Currently there is variation across the legislation in relation to whether the thresholds are specified in the Acts or Regulations. This is also the case for all other thresholds relating to financial transactions such as acquisitions of collection material, and acquisition and disposal of property, right or privilege and construction of buildings. This is discussed further below in relation to Item 9.
38. It is intended that amendments to the Regulations will be pursued separately and that they would each specify a threshold of \$2 million, except for the NGA where a higher \$10 million threshold would be introduced to mirror its existing acquisition threshold, at or below which ministerial approval would not be required.
39. While the disposal of collection material across the NCIs remains relatively infrequent, the Bill and proposed Regulation amendments would standardise the approvals process in practice and reduce administration for the NCIs. It would also better align ministerial approval of collection material disposal thresholds with those already in place for the acquisition or disposal of a property, right or privilege.
40. Following on from this, the Bill would introduce a requirement for the disposal of collection material to be included in annual reporting in those Acts that do not currently include this provision, namely the NLA Act.
41. Item 2 would remove the value threshold for a disposal of material from the Act and insert that a disposal would be subject to the provisions of section 47-Restrictions on financial transactions, which provides for these thresholds to be prescribed by the Regulations. In the case of the ANMM, it is intended that the value threshold that must be exceeded in order to trigger a requirement for ministerial approval to dispose of national maritime collection material would be increased from \$20,000 to \$2 million. The Bill and proposed Regulations would align the ANMM's acquisitions and disposals thresholds and align the ANMM with the other NCIs with the exception of the NGA.

Item 3 - Section 14

42. Item 3 would repeal section 14 of the ANMM Act, which gives the Minister the power to direct the Council with respect to the performance of the functions, or the exercise of the powers, of the ANMM. It requires that the Council comply with any such directions and the Minister to table each direction given under section 14 in each House of the Parliament within six sitting days of the direction being given, in the absence of which the direction ceases to have effect.
43. There is inconsistency across the enabling NCI Acts in relation to the power of the Minister to issue a written ministerial direction to a governing body. The ANMM, NFSA, NMA and NPGA Acts allow this, but the NGA and NLA Acts do not. While this is a rarely used provision, there is merit in there being a consistent power available to issue directions.
44. A new provision which would give the Minister the power to give directions to the Council by legislative instrument is provided by Item 11. Similar provisions would also be introduced by Schedule 2 to amend the NGA Act, the NLA Act and the NMA Act to provide greater consistency across the Acts. The requirement for directions to be tabled in the Parliament would be removed as section 53(A), provided by Item 11, would provide for directions to be legislative instruments, which means they would be required to be published on the Federal Register of Legislation. The reporting of any such directions in NCI annual reports is also required under the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule).

Item 4 - After subsection 17(5)

45. Item 4 would insert new subsection 17(5AA), which would provide that a person must not be appointed as a member of the ANMM Council referred to in paragraphs 17(1)(a) or (c), the Chairperson and all other members of the Council other than the Director and the officer from the Royal Australian Navy respectively, for a period if the sum of that period and any periods of previous appointment of the person as a member exceeds 9 years.
46. The maximum length of a single term for members of the governing bodies, who are appointed by either the Minister or the Governor-General according to the respective Acts, is 3 years. The NFSA Act and NPGA Act already include a cap of 9 years' service in total for individual Board members.
47. The Bill seeks to introduce a maximum service period of 9 years in total for an individual member of a governing body as a standard across all six Acts. A ceiling on years of service would ensure that NCIs can benefit from a governing body membership that achieves renewal balanced with continuity of corporate expertise. The intention is that any periods of acting appointment would be included as part of total service, as there is no diminution to the powers or entitlements available to the member on the basis of acting status.
48. The Bill would not apply this maximum service cap to NCI agency heads given the highly specialised professional skills required of those positions, or the two

representative members on the NLA Council and the one representative member on the ANMM Council.

49. After the relevant amendments commence, the maximum service cap would not impact existing NCI Board or Council members while they complete their current terms. It would be a matter to consider in the context of appointments, particularly if they involve reappointments. An assessment of existing governing body appointments has shown that there is one member whose current term will bring them in excess of the proposed 9 year cap.

Item 5 - Subsection 23(10)

50. Item 5 would omit from subsection 23(10) the requirement for the Council to forward a copy of the minutes of its meetings to the Minister.
51. The requirement to forward the minutes of Council meetings to the Minister does not apply to the governing bodies of any of the other five NCIs and is superfluous to the governing body meeting its statutory obligations. Removal of this requirement would remove an unnecessary requirement. The minutes of Council meetings are routinely made available to the portfolio Department and may be provided to the Minister on request.

Item 6 - Division 3 of Part 3

52. Item 6 repeals Division 3 of Part 3 of the ANMM Act, which relates to corporate plans and annual operational plans.
53. Section 26 relates to the approval and tabling of the ANMM's corporate plans. Subsection 26(1) currently requires a corporate plan prepared by the ANMM Council in accordance with section 35 of the PGPA Act be given to the Minister for approval at least 3 months before the commencement of the corporate plan, or a shorter period if agreed by the Minister. Subsection 26(2) provides for the timing in which the corporate plan comes into force, and subsection 26(3) requires the corporate plan to be tabled in the Parliament within 15 sitting days of its approval by the Minister.
54. Section 27 relates to varying and tabling corporate plans. Subsection 27(1) requires any variation to the corporate plan to be approved by the Minister, the variation applies from the date approved by the Minister (subsection 27(2)), and the variation must be tabled in the Parliament within 15 days of the Minister's approval of the variation (subsection 27(3)).
55. Section 28 relates to annual operational plans. Subsection 28(1) requires the ANMM Council to prepare an annual operational plan to give effect to the corporate plan and which sets out the programs the Council proposes to carry out and the resources the Council will allocate to those programs. Subsection 28(2) provides the Minister with the power to request a revision of the operational plan. Subsection 28(3) requires the Council to comply with such a request but also provides the power for the Council to vary the plan should it wish. Subsection 28(4) requires the approval of the Minister for any revision, and subsection 28(5) enables the Minister to not approve the plan where it is inconsistent with the corporate plan.

56. Section 29 requires the ANMM to comply with any corporate plan and annual operational plan in force.
57. Division 3 Part 3 imposes obligations in addition to what is required under the PGPA Act in relation to planning and reporting, and is inconsistent with the Acts of the other five NCIs.
58. Under section 35 of the PGPA Act and section 16E of the PGPA Rule, NCIs are required to present their annual corporate plan to the Minister, generally by the end of August each year. In addition to the requirements provided by the PGPA Act, the ANMM is subject to further requirements. These relate to the approval, timing and tabling of its corporate plan which are not required of other corporate Commonwealth entities. The ANMM must provide its corporate plan at least 3 months before the start of the period (generally 1 July) to which the plan relates or a shorter period if agreed by the Minister. Any variation to the plan also requires the approval of the Minister.
59. In addition to being required to present its corporate plan to the Parliament (which is not required of corporate Commonwealth entities under the PGPA Act), the ANMM has a further obligation to develop and provide to the Minister, for approval, an annual operational plan, which is not required of any other NCI.
60. The Bill seeks to remove provisions that are additional to the requirements of the PGPA Act in relation to planning and reporting. Together with the amendments proposed in relation to the NFSA this would bring the ANMM into alignment with the other NCIs, with its corporate and annual reporting obligations provided solely by the PGPA Act as for corporate Commonwealth entities. For the corporate plan this would: remove the requirement to seek the Minister's approval, rather it will require the ANMM to present the plan to the Minister in accordance with the provisions of the PGPA Rule; align the timing to that of other Commonwealth entities; and remove the requirement for the plan to be tabled in the Parliament. The amendment would also remove all requirements related to the preparation of an annual operational plan.

Items 7 and 8 - Section 39

61. Section 39 currently provides a power to the Director to delegate in writing, with the approval of the Council, all or any of the Director's powers under the Act.
62. Item 7 would introduce numbering for the purposes of adding a subsection to section 39.
63. Item 8 would add a note referring to the provisions relating to delegations in the AI Act, as well as a new subsection 39(2) whereby, in exercising a delegation, a delegate must comply with any written directions of the Director.
64. This addition would modernise and bring into alignment with current drafting practices the provision for the Director to delegate power under the Act. The ANMM remains one of only two NCIs to have such a provision. Item 8 would preserve the power of the Director to delegate the Director's powers. Under the Act, only a single power is available to be delegated, namely the engagement of consultants (section 42).

Section 39 would allow the Director to delegate this power to a staff member of the ANMM. A similar power for an agency head delegation has not been included for other NCIs as there are no functions that could be delegated included in the respective Acts.

Item 9 - Section 47 Restrictions on financial transactions

65. Item 9 repeals section 47 - Contracts, and would substitute it with a standard provision to align restrictions on financial transactions within the six NCI enabling Acts.
66. The existing section 47 requires ministerial approval for the ANMM to enter a contract for the acquisition of maritime historical material (paragraph (1)(a)) or in any other case (paragraph (1)(b)), where the value exceeds \$250,000 or a higher amount as specified in Regulations (a higher amount of \$2 million is specified in the Regulations); or subsection (2) enter a lease of land for a period exceeding 10 years. Section 47 is subject to the separate threshold for disposal in subsection 10(4) (currently \$20,000) which is repealed and remade in Section 47.
67. Each of the NCIs is subject to varying restrictions on financial transactions which relate to matters such as acquiring or disposing of collection material, acquiring or disposing of a property, right or privilege, the entering of construction contracts, and the lease of land. All NCIs require ministerial approval under their Acts to enter into a transaction above a financial threshold specified in either their Act itself or the respective regulations.
68. Of the six NCI Acts, two do not specify any thresholds in the Act itself, only in Regulations. The remaining four Acts specify amounts in the Acts but also specify higher amounts in the Regulations. The Bill seeks to standardise how thresholds are provided across the Acts and therefore would remove specified thresholds from the four Acts and provide for them to be prescribed in the respective Regulations to align with more recently drafted Acts. It is anticipated that specifying thresholds in the Regulations, rather than the Acts, would facilitate the updating of threshold amounts over time.
69. With the exception of (a) acquiring or disposing of a property, right or privilege or the entering of construction under the NPGA Act (\$1 million threshold specified); (b) the acquisition of works of art under the NGA Act (\$10 million threshold specified); (c) the disposal of collection material by the NMA (\$250,000); and (d) the disposal of collection material by the ANMM (\$20,000), ministerial approval is required for all financial transactions above \$2 million across the Acts or associated Regulations.
70. With the exception of the NGA Act, for which Regulations would be made to provide that the collection material acquisition and disposal thresholds for entering contracts would be \$10 million to reflect the nature of the collection, the Regulations would be remade to provide a threshold of \$2 million across each of the Acts, at or below which approval by the Minister would not be required.
71. Section - 47 Restrictions on financial transactions would introduce six standardised Items which are included across the six Acts. These include: (a) the acquisition of collection material; (b) the disposal of collection material; (c) the acquisition of

property, right and privilege; (d) the disposal of property, right or privilege; (e) the construction of a building; and (f) entry into a lease of land for a period exceeding 10 years. The first five Items are subject to value thresholds specified in the respective Regulations.

72. With the exception of paragraphs 47(1)(b) and 47(1)(f), it is intended that all Items in subsection 47(1) would remain subject to an existing threshold value of \$2 million through remade Regulations. Paragraph 47(1)(b), discussed in Item 2, is currently subject to a threshold of \$20,000 which is proposed to be increased to \$2 million as discussed in Item 2. Paragraph 47(1)(f) is not subject to a monetary threshold.
73. Subsection 47(2) would provide that an approval by the Minister under subsection 47(1) is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.
74. Subsection 47(1) would also introduces a specific provision related to the construction of a building, subject to the property, right and privilege threshold of \$2 million. Subsection 47(3) would remove the threshold value for disposals, previously stated in the Act, and would provide for it to be prescribed in Regulations.
75. Subsection 47(4) would introduce a new provision that exempts from the thresholds any contracts that are for day-to-day operations ie. essential operational services such as utilities, security, cleaning and routine general maintenance. As the value for a particular service is considered on a cumulative basis, multi-year procurements regularly exceed the applicable threshold where they are extended or renewed. This requires new approval by the Minister on each occasion and can present a risk, for example, where there are time limitations to secure discounts, or where a whole of Government agreement is being negotiated. Prior to entering into an arrangement, NCIs seek independent expert advice on the terms of arrangements as needed to ensure value for money.
76. Subsection 47(5) would introduce an exemption for the acquisition and disposal of certain investments. This would support the amendment in Schedule 1 to provide the power to NCIs to invest revenue from donations more broadly than permitted by the PGPA Act.
77. Given the responsibility of governing bodies to manage investment activities within the parameters of the investment policy required under the Bill, and that only donated revenue can be used, and therefore low risk to the operations of NCIs, a threshold for ministerial approval for transactions related to investments is considered contrary to the intention of the newly introduced investment provisions.

Item 10 - Section 48

78. Item 10 would repeal section 48 which relates to extra matters to be included in the annual report.
79. The existing subsection 48(a) requires the particulars of each direction given by the Minister to the Council to be included in the ANMM's annual report. This item would be repealed as this is already required under 17BE(d) of the PGPA Rule.
80. The existing subsection 48(b) requires reporting on any operational plan or revision to an operational plan. As Division 3 Part 3, which relates to operational plans, would be repealed (refer to Item 6 above), this requirement would also be removed.
81. Item 10 would amend section 48 requiring the Council to report on any disposal of material in the national maritime collection under subsection 10(4) of the Act. The inclusion of disposals of collection material in annual reporting is discussed above in relation to Item 2.

Item 11 - After section 53

82. Item 11 would insert section 53A, which provides a power to the Minister to give directions to the ANMM Council about the performance of its functions or the exercise of its powers.
83. Section 53A(1) would enable the Minister to provide a direction by legislative instrument and notes that section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* would not apply to directions.
84. Subsections 53A(2) and 53A(3) would provide that the direction must be of a general nature only and that the Council must comply with any such direction.
85. The power for the Minister to give directions is discussed above in relation to Item 3.
86. Item 11 would also introduce section 53B, which provides a power for the Minister to delegate some of the Minister's functions or powers under the Act (as discussed in Item 1 above). Subsection 53B(1) would limit delegation to the Secretary of the Department or an SES employee, or acting SES employee, in the Department. Subsection 53B(2) would exclude the following powers from delegation: making land available (section 8), appointing acting Council members (section 18) or giving directions to the Council (section 53A).
87. The items that would be excluded from delegation under the Act are: making land available (subsection 8(6)) which aligns with the existing legislation of other NCIs; giving directions to the Council by legislative instrument about the performance of its functions or the exercise of its powers (subsection 53A); the appointment of a Council member to act as Chair during a vacancy in the office or during any period when the Chair is absent from duty or from Australia (subsection 18(1)); and the appointment of a person who is not a Council member to act as a member during a vacancy in the office

of the member, or any period when the member is absent from duty or from Australia or unable to perform their duties (subsection 18(2)).

88. Section 53B would not prevent the Minister from exercising any power. A similar power would be introduced for those Acts that currently do not permit the Minister to delegate approvals to acquire or dispose of collection material, property, right or privilege or enter a contract for the construction of a building, subject to specified thresholds; or to appoint temporary agency heads during a vacancy in the office or any period where the office holder is absent from duty or unable to perform the duties of the office. The delegation would be made to the Secretary of the Department and relevant SES employees or acting SES employees of the Department. Delegation would not extend to the Minister's power to make or terminate appointments to governing bodies or permanent appointments of agency heads (where applicable), the power to give directions to the governing body, or the power to delegate. The provisions in the other Acts would be: section 42A of the NFS Act, section 45A of the NGA Act, section 27D of the NLA Act and section 42 of the NMA Act and are discussed below under each Act.

Item 12 - Application and savings provisions

89. Item 12(1) would provide that subsection 8(6) of the ANMM Act, as in force immediately before the commencement of the Item, continues to apply on and after that commencement in relation to a delegation in force under that subsection immediately before that commencement. This would preserve any delegation in force made under subsection 8(6), which relates to making land available to the ANMM, by the Minister to the person holding or performing the duties of the office of Secretary of the Department.
90. Item 12(2) would provide that the amendment of section 10 of the ANMM Act made by Schedule 2 of the Bill applies in relation to a determination made under that section on or after the commencement of the Item. The amendments to section 10 made by the Bill in relation to the disposal of national maritime collection material would take effect on or after commencement of the Bill.
91. Item 12(3) would provide that section 14 of the ANMM Act, as in force immediately before the commencement of the Item, continues to apply on and after that commencement in relation to a direction in force under that section immediately before that commencement. This would preserve any direction in force made under section 14 by the Minister to the ANMM Council.
92. Item 12(4) would provide that subsection 17(5AA) of the ANMM Act, as inserted by Schedule 2 to the Bill, applies in relation to an appointment made under subsection 17(2) of that Act on or after the commencement of the Item, whether a period of previous appointment referred to in paragraph 17(5AA)(b) of that Act occurred before, on or after that commencement. Subsection 17(5AA) would provide for the introduction of a maximum of 9 years' service in total by individual Council members and the Chairperson. This Item provides that subsection 17(5AA) would apply to an appointment made from commencement of the Act, but that any periods of previous appointment that occurred before, on or after that commencement would count

towards this 9 year maximum period. The amendment would not impact on the terms of any current appointments.

93. Item 12(5) would provide that the amendment of section 23 of the ANMM Act made by Schedule 2 of the Bill applies in relation to a meeting held on or after the commencement of this Item. The amendment of section 23 would remove the requirement that the Council to provide copies of minutes of Council proceedings, and per this Item will apply from commencement of this Act.
94. Item 12(6) would provide that the amendments of section 39 of the ANMM Act made by Schedule 2 to the Bill apply in relation to a delegation in force on or after the commencement of the Item, whether that delegation was made before, on or after that commencement. The amendments to section 39 would therefore apply to any delegation made by the Director to a member of the staff of the Museum in force on or after the commencement of the Item.
95. Item 12(7) would provide that the repeal and substitution of section 47 of the ANMM Act made by Schedule 2 to the Bill does not affect the validity of an approval in force under that section immediately before the commencement of this Item. Currently, section 47 requires the Minister to provide approval for the Museum to enter into certain contracts or for entering into certain leases for land. This Item would provide that the validity of an approval already in force will not be affected.
96. Item 12(8) would provide that subsection 47(4) of the ANMM Act, as substituted by Schedule 2 to the Bill, applies on and after the commencement of the Item in relation to contracts entered into before, on or after that commencement. This would mean that ministerial approval will not be required in relation to contracts for the supply of a service for the day-to-day operations of the Gallery, whether the relevant contract was entered into before, on or after commencement of the Bill.

National Film and Sound Archive of Australia Act 2008 (NFSA Act)

Item 13 - Part 5

97. Item 13 would repeal Part 5 (sections 33-36) which relates to planning.
98. Section 33 - Corporate Plan provides the Minister with a power to give the NFSA Board written instructions for the preparation of its corporate plan which the Board must comply with, noting these may include details of particular matters in the plan. Subsection 33(2) states that such an instruction is not a legislative instrument.
99. Section 35 - Approval of the corporate plan by the Minister provides that the plan must be given to the Minister before the commencement of the plan (subsection 35(1)); the Minister may, by written notice, approve the plan or request it be revised (subsection 35(2)); the Board must comply with a request to revise a plan and provide the revised plan to the Minister for approval (subsection 35(3)); the plan comes into force once approved by the Minister (subsection 35(4)); and a written notice by the Minister in relation to the plan is not a legislative instrument (subsection 35(5)).

100. Section 36 relates to variation of a corporate plan. It includes that the Board may vary the plan (subsection 36(1)); the Minister may request the Board to revise the plan and the Board must comply (subsection 36(2)); a variation must be given to the Minister for approval (subsection 36(3)); a variation takes effect on the day it is approved by the Minister (subsection 36(4)); a plan continues in force on and after the day a variation is approved (subsection 36(5)); and a written request or approval by the Minister is not a legislative instrument (subsection 36(6)).
101. The repeal of reporting requirements additional to those required by the PGPA Act is discussed above in relation to Item 6.
102. The Bill seeks to remove provisions additional to the requirements of the PGPA Act in relation to planning and reporting. Together with the amendments proposed in relation to the ANMM this would bring the NFSA into alignment with the other NCIs, with corporate plan obligations provided solely by the PGPA Act as for corporate Commonwealth entities. For the corporate plan this would: remove the requirement to seek the Minister's approval, rather it will require the NFSA to present the report to the Minister in accordance with the provisions of the PGPA Rule; align the timing to that of other Commonwealth entities; remove the power for the Minister to give written instructions in relation to the plan; and make variations to the plan subject to the provisions of the PGPA Act, which do not require ministerial approval.

Item 14 - Section 39

103. Item 14 would repeal section 39 which relates to restrictions on financial transactions and would substitute it with a standard provision which aligns across the NCI Acts.
104. The standardisation of provisions related to restrictions on financial transactions across the six Acts are discussed above in relation to Item 9. These would be added by subsection 39(1).
105. The Regulations which would be remade to reflect the new standardised provision would include a threshold of \$2 million, as is the case for the NFSA's current Regulations. The amended provision would add a specified provision for the acquisition and disposal of collection material, for which the \$2 million threshold would also apply.
106. Subsection 39(2) provides that approval by the Minister under subsection 39(1) is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.
107. Subsection 39(3) would introduce a new provision that exempts from the thresholds, contracts that are for day-to-day operations ie. essential operational services such as utilities, security, cleaning and routine general maintenance. As the value for a particular service is considered on a cumulative basis, multi-year procurements regularly exceed the threshold where they are extended or renewed. This requires new approval by the Minister on each occasion and can present a risk, for example, where there are time limitations to secure discounts, or where a whole of Australian Government agreement is being negotiated. Prior to entering into an arrangement, NCIs

seek independent expert advice as needed on the terms of arrangements to ensure value for money.

108. Subsection 39(4) would introduce an exemption for the acquisition and disposal of investments. This would support the amendment in Schedule 1 to provide the power to NCIs to invest revenue from donations more broadly than permitted by the PGPA Act.
109. Given the responsibility of governing bodies to manage investment activities within the parameters of the investment policy required under the Bill, and that the application of donated funds presents low risk to the operations of NCIs, a threshold for ministerial approval is considered contrary to the intention of the newly introduced investment provisions.

Item 15 - After section 42

110. Item 15 would insert a standardised provision to enable the Minister to delegate certain powers.
111. The power for the Minister to delegate functions and powers is discussed in detail above in Item 1.
112. The exclusions to the Minister's powers of delegation under the NFSA Act would include: the Minister's powers for the appointment (section 11) and termination (section 16) of Board members, and appointment of acting Board members (section 12) under the Act; and the power to give directions to the Board (section 42).

Item 16 - Application and savings provisions

113. Item 16(1) would provide that the repeal and substitution of section 39 of the NFSA Act made by Schedule 2 to the Bill does not affect the validity of an approval in force under that section immediately before the commencement of this item. Currently, section 39 requires the Minister to provide approval for the NFSA to enter into certain contracts or for entering into certain leases for land. This Item would provide that the validity of an approval already in force will not be affected.
114. Item 16(2) would provide that subsection 39(3) of the NFSA Act, as substituted by Schedule 2, applies on and after the commencement of this Item in relation to contracts entered into before, on or after that commencement. Subsection 39(3) would provide that subsection 39(1), which requires the written approval of the Minister, does not apply to entering into contracts where the contract is for the day-to-day operations of the NFSA. This Item would apply to existing contracts and contracts entered into on, or after, commencement of this provision.

National Gallery Act 1975 (NGA Act)

Item 17 and 18 - Section 5 and Paragraph 6(1)(b)

115. Item 17 would repeal section 5 which provides that the national collection be housed in the Australian Capital Territory (ACT). Section 5 would not prevent works from the national collection being exhibited outside of the ACT.
116. Paragraph 6(1)(b) would add “in Australia or elsewhere” to the function of exhibiting or making available for exhibition by others, works of art from the national collection.
117. The Bill seeks to exclude the provision for the national collection to be exclusively housed in the ACT as it is inconsistent with the enabling Acts for the other NCIs which do not include geographic limitations on where their collections may be housed. The current provision may have the effect of limiting future options regarding storage of Gallery collection items.
118. Paragraph 6(1)(b) would clarify that the exhibition of works is not limited to within Australia, which in turn supports the full range of activities undertaken by the Gallery including its important international exchange and exhibition programs.

Item 19 - Subsection 9(5)

119. Item 19 would repeal subsection 9(5) where the Council has resolved to dispose of a work of art and the Minister has agreed to the disposal, the Gallery may dispose of it accordingly.
120. Item 19 would substitute 9(5) with the provision where, subject to a Council resolution, a work of art may be disposed, thereby removing the requirement for the Minister’s approval. Subsection 9(6) would subject the Council’s powers to dispose of works of art without the Minister’s approval to those works at or below a financial threshold specified in the Regulations. An amount of \$10 million would be prescribed in Regulations.
121. The current legislation enables the NGA to acquire works of art valued at up to \$10 million without the Minister’s approval but requires any disposal of a work of art, regardless of its value, to be approved by the Minister. As discussed above in Item 9, the Bill seeks to align thresholds related to acquisitions and disposals and \$2 million would be prescribed by Regulations with the exception of the NGA which would include a threshold of \$10 million for the disposal of collection material. This would align with the existing \$10 million threshold for acquisitions by the NGA. Where the disposal of a work of art occurs, it is subject to a rigorous internal deaccession policy that includes approval by the NGA Council in accordance with the NGA Act.

Item 20 - After subsection 13(3)

122. Item 20 relates to the appointment of members to the NGA Council. It would insert subsection 13(3A) whereby a person must not be appointed as a member referred to in 13(1)(a) i.e. the Chair or 13(1)(c) a member, for a term where the sum of that term or any previous terms exceeds 9 years.

123. This amendment aims to standardise the provision across all NCI Acts and is discussed in more detail above in relation to Item 4. Currently the NGA Act does not limit the number of terms that can be served by an individual. The amendment would not affect current appointments to the Council.

Item 21 - Section 15

124. Item 21 would repeal section 15 which relates to the appointment of deputies of members. Subsection 15(1) provides a power for a part-time member to appoint a person, with the approval of the Minister, other than a member, to act as their deputy on the NGA Council. Subsection 15(2) allows a member to revoke an appointment of a deputy, which takes effect once notice has been provided to the Minister. Subsection 15(3) enables a deputy of a member to attend meetings in their absence, as a member.
125. Apart from deputies of members, the NGA Act does not currently allow for specific arrangements regarding an acting Chair or Deputy Chair.
126. Item 21 would substitute the appointment of deputies of members with powers for the appointment of an acting Chair, an acting Deputy Chair and acting members which are aligned to the other NCIs.
127. Section 15(1) would enable a Deputy Chair to act as Chair during a vacancy in the office of Chair or during any period when the Chair is absent from duty or from Australia, or unable to perform the duties of the office. It would note the rules that apply to persons acting as the Chair in section 33A of the AI Act.
128. Section 15(2) would enable the Council to appoint a member by written instrument to act as the Deputy Chair during a period where the Deputy Chair is either acting as Chair, absent from duty or Australia or unable to perform the duties of the office. It would note the rules that apply to acting appointments in sections 33AB and 33A of the AI Act.
129. Section 15(3) would provide a power to the Minister to appoint a member by written instrument to act as a member (other than as the Director, Chair or Deputy Chair) during a vacancy in the office of a member or when a member is acting as the Deputy Chair, absent from duty or from Australia, or unable to perform the duties of the office. Section 15(3) would also note that for rules that apply to acting appointments, see sections 33AB and 33A of the AI Act.
130. The amendment to this section would remove the power for a member of the Council to appoint their own deputy to that governing body. This provision has rarely, if ever, been used and presents a risk to the functioning of the governing body as it does not offer the level of due diligence afforded by the Cabinet and Federal Executive Council appointments processes.
131. For consistency with other Acts, the provisions for the appointment of an acting Council Chair and Deputy Chair are proposed. In the absence of this provision the appointment of an acting Chair during a vacancy in the office would require the approval of the Prime Minister as described below. The new provision would: enable the Deputy Chair

to automatically be appointed to the role of Chair subject to meeting the terms of subsection 15(1) and the Council to appoint a Deputy Chair subject to meeting the terms of subsection 15(2); and would provide a power to the Minister to appoint an acting member subject to the terms of subsection 15(3).

132. The NGA Act does not provide an express power for the Minister to appoint an individual to act as a member of the Council. Such a provision would offer a mechanism for continuity or reasons of quorum, or other circumstances where there are delays to filling vacancies on a longer term basis.
133. The Cabinet Handbook requires the approval of any acting arrangement for a period of up to three months to be brought to the Prime Minister's attention, with the option of one further extension of up to three months (bringing the total period to six months). This provides a measure of control against acting arrangements being used in lieu of regular appointment processes, but provides sufficient time for an appointment process to be undertaken.
134. The Bill seeks to provide a power to the Minister to make certain acting appointments, whether it is the Minister or the Governor-General who has the authority to make the substantive appointments under the relevant Act. The Bill would exclude the Minister from making acting appointments for three specified positions: representatives elected by the House of Representatives and Senate (NLA Council) and an Officer of the Royal Australian Navy appointed by the Chief of the Australian Defence Force (ANMM Council).

Item 22 - Subsection 16(1)

135. Item 22 would omit "the deputy of a member" from subsection 16(1) which relates to remuneration and allowances of members.
136. This amendment would follow from the removal of the provision for a member of a governing body to appoint a deputy as discussed above in Item 21.

Item 23 - Subsection 20(6)

137. Section 20 includes the provisions related to meetings of the Council and subsection 20(6) specifies the terms for meeting quorum. Item 23 would omit "7 members constitute a quorum" and substitute "a quorum is constituted by a majority of members".
138. The ANMM Act, NFSA Act and NPGA Act specify a majority of current members as meeting quorum. The NGA Act and NMA Act specify the minimum number of members required to achieve quorum as 7 and the NLA Act as 5. The Bill seeks to standardise quorum to be the majority of appointed members across all NCI governing bodies. This amendment would align the Acts and ensures continuity of operations should there be vacancies in the governing body membership, or absences from meetings.

Item 24 - Section 38

139. Item 24 would repeal section 38 which provides the power to purchase and dispose of assets. Section 38 includes provisions relating to: acquiring a work of art, acquiring and disposing of any property, right or privilege; entering a contract for the construction of a building; and entering a lease of land for a period exceeding 10 years.
140. The standardisation of provisions related to restrictions on financial transactions across the six Acts are discussed above in detail in relation to Item 9. These would be added by section 38.
141. The thresholds at or below which the Minister's approval is not required, namely \$10 million for acquisition of works of art and \$2 million for property, right privilege and construction of a building, as specified in the regulations for the NGA, would be remade in Regulations. The amended Regulations would add a specified provision for the disposal of collection material, for which the \$10 million threshold would also apply.
142. Subsection 38(2) would provide that approval by the Minister under subsection 38(1) is not a legislative instrument. This provision is included to assist readers. The provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.
143. Subsection 38(3) would introduce a new provision that exempts from the thresholds, contracts that are for day-to-day operations ie. essential operational services such as utilities, security, cleaning and routine general maintenance. As the value for a particular service is considered on a cumulative basis, multi-year procurements regularly exceed the threshold where they are extended or renewed. This requires new approval by the Minister on each occasion and can present a risk, for example, where there are time limitations to secure discounts, or where a whole of Australian Government agreement is being negotiated. Prior to entering into an arrangement, NCIs seek independent expert advice as needed on the terms of arrangements to ensure value for money.
144. Subsection 38(4) would introduce an exemption for the acquisition and disposal of investments. This would support the amendments proposed by Items 1-18 in Schedule 1 to provide the power to NCIs to invest donated revenue more broadly than permitted by the PGPA Act.
145. Given the responsibility of governing bodies to manage investment activities within the parameters of the investment policy required under the Bill, and that the application of donated revenue presents low risk to the operations of NCIs, a threshold for ministerial approval is considered contrary to the intention of the newly introduced investment provisions.

Item 25 - After section 45

146. Item 25 would insert section 45A to provide a power to the Minister to give directions to the Council. Subsection 45A(1) would enable the Minister by legislative instrument to give written directions to the Council about the performance of its functions or the

exercise of its powers. Subsection 45A(2) would limit directions to be of a general nature only and subsection 45A(3) would require the Council to comply with such a direction.

147. The Bill seeks to standardise this provision across the six NCI Acts and this is discussed in greater detail above in Item 3.
148. Item 25 would also insert section 45B which provides a power for the Minister to delegate all of the Minister's functions or powers under the Act (as discussed in Item 1 above). Subsection 45B(1) would limit delegation to the Secretary of the Department or an SES employee, or acting SES employee, in the Department. Subsection 45B(2) would exclude the following powers from delegation: making land or works of art available to the Gallery (section 8); appointing acting Council members (section 15); making directions regarding the employment of staff (who are employed under the NGA Act rather than the *Public Service Act 1999* (section 33); or directions to the Council (section 45A).

Item 26 - Application and saving provisions

149. Item 26(1) would provide that the amendment of section 9 of the NGA Act made by Schedule 2 applies where the NGA Council resolves, on or after the commencement of this item, that a work of art be disposed of. Disposal of a work of art following a Council resolution on or after commencement of the Bill would therefore need to be made in compliance with section 38, if required.
150. Item 26(2) would provide that subsection 13(3A) of the NGA Act, as inserted by Schedule 2 to the Bill, applies in relation to an appointment made under subsection 13(2) of that Act on or after the commencement of this Item, whether a term of previous appointment referred to in paragraph 13(3A)(b) of that Act occurred before, on or after that commencement. Subsection 13(3A) provides for the introduction of a maximum of 9 years' service in total by individual Council members and the Chairperson. This item would provide that subsection 13(3A) would apply to an appointment made from commencement of the Act, but that any terms of previous appointment that occurred before, on or after that commencement would count towards this 9 year maximum period. The amendment would not impact on the terms of any current appointments.
151. Item 26(3) would provide that the repeal and substitution of section 38 of the NGA Act made by Schedule 2 would not affect the validity of an approval in force under that section immediately before the commencement of this item. Currently, section 38 requires the Minister to provide approval for the NGA to enter into certain contracts or for entering into certain leases for land. This item would provide that the validity of an approval already in force would not be affected.
152. Item 26(4) would provide that subsection 38(3) of the NGA Act, as substituted by Schedule 2, would apply on and after the commencement of this item in relation to contracts entered into before, on or after that commencement. This would mean that ministerial approval would not be required in relation to contracts for the supply of a service for the day-to-day operations of the Gallery, whether the relevant contract was entered into before, on or after commencement of the Bill.

National Library Act 1960 (NLA Act)

Item 27 - Section 7A

153. Item 27 would repeal section 7A of the NLA Act which relates to the Library's power to purchase and dispose of assets. This clause would be replaced by section 24 (discussed below in Item 34) which standardises restrictions on financial transactions, as discussed in detail in relation to Item 9.

Item 28 - After subsection 10(5)

154. Proposed Item 28 inserts a new subsection 10(5A), which would provide that a person must not be appointed as a Council member referred to in paragraph 10(2)(c) i.e. a member, for a period if the sum of that period and any periods of previous appointment of the person as a member exceeds 9 years.
155. The introduction of a ceiling of nine years' service as a member of a governing body is discussed in detail above in relation to Item 4.
156. The NLA Act does not currently include a cap on years of service. The introduction of this provision would not apply to current appointments, only to those occurring after the amendment takes effect.

Items 29, 30 and 31 - Paragraph 15(1)(c), After subsection 15(1) and Subsection 15(2)

157. Items 29 and 30 relate to section 15 - Vacation of office. Subsection 15(1) specifies a number of circumstances in which a member other than the Director-General shall have their appointment terminated by the Governor-General. Paragraph 15(1)(c) specifically refers to the vacation of office by a member of the Council who is elected by either House of the Parliament.
158. Item 29 would repeal 15(1)(c) and Item 30 inserts subsection (1A) which provides that where a member elected by either House of the Parliament ceases to be a member of that House, they cease to be a member of the Council.
159. The effect of this provision would be that the term of a Council member elected by either House of the Parliament who ceases to be a member of that House automatically ceases and would therefore not be required to tender a letter of resignation to the Governor-General.
160. Item 31 would omit the reference "paragraph (1)(c)" from subsection 15(2) and substitute it with "subsection (1A)" to reflect the proposed amendments to subsections 15(1) and 15(1A).

Item 32 - Subsection 16(6)

161. Section 16 relates to the provisions for meetings of the Council and subsection 16(6) specifies the terms for meeting quorum. Item 32 would omit "5 members constitute a quorum" and substitute "a quorum is constituted by a majority of members". This

would align the NLA Act with all other NCI Acts and is discussed further in Item 23 above.

Item 33 - Subsections 17(5) to (8)

162. Section 17 relates to the Director-General and subsections 17(5) to 17(8) relate to the Director-General's power to delegate any of their powers or functions under the Act.
163. Specifically, the Bill would repeal subsections 17(5) to 17(8): subsection 17(5) enables the Director-General by written instrument to delegate to a person engaged under the *Public Service Act 1999* all or any of their powers and functions under the Act (not including the power to delegate provided by this subsection). Subsection 17(6) requires that this power be subject to any directions of the Council. Subsection 17(7) provides that a delegate has the full and effective powers of the Director-General as delegated. Subsection 17(8) allows for the delegation to be revocable and does not limit the Director-General in the exercise of a power or performance of a function.
164. The Bill seeks to repeal these powers of delegation as there are no powers available under the Act which may be meaningfully delegated. Except for the ANMM, none of the primary Acts of the NCIs include a power for the agency head to delegate nor do they have any functions that are able to be delegated under those Acts. In the case of the ANMM and the NMA, the Acts include a power for the Director to engage consultants and therefore the delegation power has been retained in those instances.

Item 34 - Before section 26

165. Item 34 would insert section 24, a standardised provision relating to restrictions on financial provisions which aims to align the six NCI Acts as discussed in Item 9 above. It would replace section 7A as proposed for repeal by Item 27.
166. Each of the NCIs is subject to varying restrictions on financial transactions which relate to matters such as acquiring or disposing of a property, right or privilege, the entering of construction contracts, the entering of contracts for the acquisition of specified material, the entering of contracts more generally, and the lease of land for a period exceeding 10 years. All NCIs require ministerial approval under their Acts to enter into a transaction above a specified financial threshold.
167. Subsection 24(1) would introduce the six standardised provisions which are subject to thresholds stated in regulations, at or below which, the NCI would not be required to seek the approval of the Minister prior to entering a contract. The items would be: (a) the acquisition of library material; (b) the disposal of library material; (c) the acquisition of property, right and privilege; (d) the disposal of property, right or privilege; (e) the construction of a building; and (f) entry into a lease of land for a period exceeding 10 years. The first five items (a) to (e) would be subject to value thresholds specified in the respective regulations.
168. Paragraphs 24(1)(a) and 24(1)(b) which specify the acquisition and disposal of library material are newly added. Previously the Act made no distinction between collection material and non-collection material.

169. With the exception of paragraph 24(1)(f), all items in subsection 24(1) would remain subject to a threshold value of \$2 million which would be prescribed in Regulations. Paragraph 24(1)(f) would not be subject to a monetary threshold.
170. Subsection 24(2) would provide that approval by the Minister under subsection 24(1) is not a legislative instrument. This provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the Legislation Act 2003.
171. Subsection 24(3) would introduce a provision that exempts from the thresholds, any contracts that are for day-to-day operations ie. essential operational services such as utilities, security, cleaning and routine general maintenance. As the value for a particular service is considered on a cumulative basis, multi-year procurements regularly exceed the applicable threshold where they are extended or renewed. This requires new approval by the Minister on each occasion and can present a risk, for example, where there are time limitations to secure discounts, or where a whole of Government agreement is being negotiated. Prior to entering into an arrangement, NCIs seek independent expert advice on the terms of arrangements as needed to ensure value for money.
172. Subsection 24(4) would introduce an exemption for the acquisition and disposal of certain investments. This would support the amendment in Schedule 1 to provide the power to NCIs to invest revenue from donations more broadly than permitted by the PGPA Act.
173. Given the responsibility of governing bodies to manage investment activities within the parameters of the investment policy required under the Bill, and that only donated funds can be used, and therefore low risk to the operations of NCIs, a threshold for ministerial approval for transactions related to investments is considered contrary to the intention of the newly introduced investment provisions.
174. Section 25, as added, would require the Council to provide a statement on disposals of library material in annual reporting and is discussed above in relation to Item 2. In the case of the NLA, this reporting would be expected to be of a general or summary nature given the volume of library material this provision relates to.

Item 35 - After section 27B

175. Item 35 would insert section 27C to provide a power to the Minister to give directions to the Council. Subsection 27C(1) would enable the Minister by legislative instrument to give written directions to the Council about the performance of its functions or the exercise of its powers. Subsection 27C(1) would note that section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* would not apply to directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act). Subsection 27C(2) would limit directions to be of a general nature only and subsection 27C(3) would require the Council to comply with such a direction.
176. Item 25 would also insert section 27D which provides a power for the Minister to delegate all of the Minister's functions or powers under the Act (as discussed in Item 1 above). Subsection 27D(1) would limit delegation to the Secretary of the Department or an SES employee, or acting SES employee, in the Department. Subsection 27D(2)

would exclude the following powers from delegation: appointing acting Council members (section 11); or giving directions to the Council (section 27C).

Item 36 - Applications and savings provisions

177. Item 36(1) would provide that the repeal of section 7A of the NLA Act made by Schedule 2 would not affect the validity of an approval in force under that section immediately before the commencement of this item. Currently, section 7A requires the Minister to provide approval for the NLA to enter into certain contracts or certain leases for land. This item would provide that the validity of an approval already in force will not be affected.
178. Item 36(2) would provide that subsection 10(5A) of the NLA Act, as inserted by Schedule 2, applies in relation to an appointment made under paragraph 10(2)(c) of that Act on or after the commencement of this item, whether a period of previous appointment referred to in paragraph 10(5A)(b) of that Act occurred before, on or after that commencement. Subsection 10(5A) would provide for the introduction of a maximum of 9 years' service in total for certain Council members including any appointed as the Chair and Deputy Chair as identified in 10(2)(c) and 12. This item would provide that subsection 10(5A) would apply to an appointment of such members made from commencement of the Act, and that any periods of previous appointment that occurred before, on or after that commencement would count towards this 9 year maximum period. The amendment would not impact on the terms of any current appointments.
179. Item 36(3) would provide that subsection 24(3) of the NLA Act, as inserted by Schedule 2, applies on and after the commencement of this item in relation to contracts entered into before, on or after that commencement. This would mean that ministerial approval would not be required in relation to contracts for the supply of a service for the day-to-day operations of the Library, whether the relevant contract was entered into before, on or after commencement of the Bill.
180. Item 36(4) would provide that section 25 of the NLA Act, as inserted by Schedule 2, applies in relation to an annual report for a period ending after the commencement of this item, where the disposals occurred at any time during that period. This would mean that all disposals occurring within the reporting period, including prior to the commencement of this provision, would be required to be reported.

National Museum of Australia Act 1980 (NMA Act)

Item 37 - Subsection 3(1) (definition of deputy part-time member)

181. The definition of a deputy part-time member would be removed as a consequence of the repeal of section 15 discussed below in relation to Item 42.

Items 38 and 39 - Subsection 9(4) and Subsection 9A(3)

182. Item 38 relates to subsection 9(4) regarding the disposal of historical material in the national historical collection. The existing subsection 9(4) which provides a power to the Council, where it has resolved to dispose of such material, to dispose of the

material. Where the material is valued above a threshold of \$250,000 the approval of the Minister is required.

183. Item 39 relates to subsection 9A(3) regarding the disposal of historical material not in the national historical collection. The existing subsection 9A(3) which provides a power to the Council, where it has resolved to dispose of such material, to dispose of the material. Where the material is valued above a threshold of \$250,000 the approval of the Minister is required
184. Items 38 and 39 would remove the value threshold for a disposal of material and insert that a disposal is subject to the provisions of section 37 which relates to restrictions on financial transactions (discussed below in Item 46). In the case of the NMA, this threshold would be increased in Regulations from \$250,000 to \$2 million, at or below which disposal of historical material would not require ministerial approval.
185. The Bill seeks to introduce a common threshold for all NCI disposals, prescribed in regulations as \$2 million (except for the NGA Regulations which proposes a \$10 million threshold) and this is discussed in detail in Item 2.

Item 40 - Section 12

186. Item 40 would repeal section 12 of the Act. Section 12 requires the Council to perform its functions and exercise its powers in accordance with any written directions that are given to it from time to time by the Minister.
187. As discussed in Item 3, there is inconsistency between the enabling legislation of each NCI in relation to the powers of the Minister to issue a written ministerial direction to the NCI governing body. While this is a rarely used provision, there is merit in there being a consistent power available to issue directions applying to the performance of functions or the exercise of powers.
188. Section 12 would be remade at section 41A (Item 47) to be consistent with other NCI Acts.

Item 41 - After subsection 13(3)

189. Item 41 would insert subsection (3A) whereby a person must not be appointed as a NMA Council member or Chair as referred to in 13(1)(a) or 13(1)(c), for a term where the sum of that term or any previous terms exceeds 9 years.
190. This amendment aims to standardise the provision across all Acts by introducing a ceiling of nine years' service for members of a governing body and is discussed in more detail above in relation to Item 4. Currently the NMA Act does not limit the number of terms that can be served by an individual. The amendment would not affect current appointments to the Council.

Item 42 - Section 15

191. Item 42 would repeal section 15 which relates to the appointment of deputies of part-time members. Subsection 15(1) currently provides a power for a part-time member to

appoint a person, with the approval of the Minister, other than a member, to act as their deputy. Subsection 15(2) allows a member to revoke an appointment of a deputy, which takes effect once notice has been provided to the Minister. Subsection 15(3) enables a deputy part-time member to resign by writing to the Minister. Subsection 15(4) enables a deputy of a member to attend meetings in their absence, as a member. Subsection 15(5) prevents such an appointment being invalidated by a defect or irregularity in, or in connection with, the appointment. Section 37 repeals subsection 3(1) (definition of a deputy part-time member).

192. Apart from deputies of members, the NMA Act does not currently allow for specific arrangements regarding an acting Chair or Deputy Chair.
193. Item 42 would repeal the appointment of deputies of part-time members and replace it with powers related to the appointment of an acting Chair, acting Deputy Chair and acting member. This would align the NMA Act to other NCI Acts.
194. Section 15(1) would enable a Deputy Chair to act as Chair during a vacancy in the office of Chair or during any period when the Chair is absent from duty or from Australia, or is unable to perform the duties of the office. It would note the rules that apply to persons acting as the Chair are provided in section 33A of the AI Act.
195. Section 15(2) would enable the Council to appoint a member by written instrument to act as the Deputy Chair during a period where the Deputy Chair is either acting as Chair, absent from duty or Australia, or is unable to perform the duties of the office. It would note the rules that apply to acting appointments are provided in sections 33AB and 33A of the AI Act.
196. Section 15(3) would provide a power to the Minister to appoint a member by written instrument to act as a member (other than as the Director, Chair or Deputy Chair) during a vacancy in the office of a member or when a member is acting as the Deputy Chair, absent from duty or from Australia, or unable to perform the duties of the office. Section 15(3) would also note that for rules that apply to acting appointments, see sections 33AB and 33A of the AI Act.
197. The amendment to this provision would remove the power for a member of the Council to appoint their own deputy to that governing body. This provision has rarely, if ever, been used and presents a risk to the functioning of the governing body as it does not offer the level of due diligence afforded by the Government appointments process.
198. For consistency with other Acts, the provisions for the appointment of an acting Council Chair and Deputy Chair are proposed. In the absence of this provision the appointment of an acting Chair during a short-term vacancy in the office would require the approval of the Prime Minister as described below. The new provision would enable: the Deputy Chair to be automatically appointed to the role of Chair subject to meeting the terms of subsection 15(1); the Council to appoint a Deputy Chair subject to meeting the terms of subsection 15(2) and would provide a power to the Minister to appoint an acting member subject to the terms of subsection 15(3).
199. The NMA Act does not currently provide an express power for the Minister to appoint an individual to act as a member of the Council. Such a provision would offer a

mechanism for continuity or reasons of quorum, or other circumstances where there are delays to filling vacancies on a longer term basis.

200. The Cabinet Handbook requires the approval of any acting arrangement for a period of up to three months to be brought to the Prime Minister's attention, with the option of one further extension of up to three months (bringing the total period to six months). This provides a measure of control against acting arrangements being used in lieu of regular appointment processes, but provides sufficient time for an appointment process to be undertaken.
201. The Bill seeks to provide a power to the Minister to make certain acting appointments, whether it is the Minister or the Governor-General who has the authority to make the substantive appointments under the relevant Act.

Item 43 - Paragraphs 16(1)(a) and (b)

202. Item 43 would repeal paragraphs 16(1)(a) and (b) which relate to: (a) a part-time member and (b) a deputy part-time member, and would substitute with (a) a part-time member (removing reference to a deputy part-time member).
203. This amendment arises as a consequence of the proposal to remove the power for a part-time member to appoint their own deputy as discussed in Item 42.

Item 44 - Subsection 20(6)

204. Section 20 includes the provisions related to meetings of the Council and subsection 20(6) specifies the terms for meeting quorum. Item 44 would omit "7 members constitute a quorum" and would substitute "a quorum is constituted by a majority of members".
205. As discussed in Item 23, the Bill seeks to standardise quorum to be the majority of appointed members across all NCI governing bodies. This amendment would align the Acts and ensures continuity of operations should there be vacancies in the governing body membership.

Item 45 - At the end of section 32

206. Section 32 relates to the power of the Director to engage consultants. Item 45 would add subsection 32(3) which would provide the Director with the power to delegate this power. The delegation would be limited to an SES employee or acting SES employee, of the NMA. The amendment would also note that sections 34AA and 34A of the AI Act contain provisions relating to delegations. Subsection 32(4) would require the delegate to comply with any written directions of the Director.
207. In the absence of a broader power for the Director to delegate powers and the absence of any other functions that could be delegated, this power to delegate would be limited to the engagement of consultants.

Item 46 - Section 37

208. Item 46 would repeal section 37 - Limit on contracts, which prevents the NMA, without the Minister's approval, from entering a contract for subsection 37(a) the acquisition of historical material, or subsection 37(b) in any other case, where the value exceeds \$250,000 or a higher amount specified in regulations. The current regulations specify a threshold of \$2 million for both (a) and (b).
209. Item 46 would replace section 37 with a standardised provision relating to restrictions on financial provisions which aims to align the six NCI Acts as discussed in Item 9 above.
210. Subsection 37(1) would introduce standardised provisions which are subject to thresholds stated in regulations, at or below which, the NCI is not required to seek the approval of the Minister prior to entering a contract. The items would be: (a) the acquisition of historical material; (b) the disposal of historical material; (c) the acquisition of property, right and privilege, other than historical material; (d) the disposal of property, right or privilege, other than historical material; (e) the construction of a building; and (f) entry into a lease of land for a period of 10 years. The first five items (a) to (e) would be subject to value thresholds specified in the respective Regulations.
211. With the exception of paragraph 37(1)(f), all items in subsection 37(1) would remain subject to an existing threshold value of \$2 million. Paragraph 37(1)(f) would not be subject to a monetary threshold.
212. Subsection 37(2) would provide that approval by the Minister under subsection 37(1) is not a legislative instrument. This provision would be declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.
213. Subsection 37(3) would introduce a new provision that exempts from the thresholds, any contracts that are for day-to-day operations ie. essential operational services such as utilities, security, cleaning and routine general maintenance. As the value for a particular service is considered on a cumulative basis, multi-year procurements regularly exceed the applicable threshold where they are extended or renewed. This requires new approval by the Minister on each occasion and can present a risk, for example, where there are time limitations to secure discounts, or where a whole of Government agreement is being negotiated. Prior to entering into an arrangement, NCIs seek independent expert advice on the terms of arrangements as needed to ensure value for money.
214. Subsection 37(4) would introduce an exemption for the acquisition and disposal of investments. This would support the amendment in Schedule 1 to provide the power to NCIs to invest revenue from donations more broadly than permitted by the PGPA Act.
215. Given the responsibility of governing bodies to manage investment activities within the parameters of the investment policy required under the Bill, and that only donated funds can be used, and therefore low risk to the operations of NCIs, a threshold for ministerial approval for transactions related to investments is considered contrary to the intention of the newly introduced investment provisions

Item 47 - After section 41

216. Item 47 would insert section 41A to provide a power to the Minister to give directions to the Council. Subsection 41A(1) would enable the Minister by legislative instrument to give written directions to the Council about the performance of its functions or the exercise of its powers. It would note that section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* would not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act). Subsection 41A(2) limits directions to be of a general nature only, and subsection 41A(3) requires the Council to comply with such a direction.
217. The Bill seeks to standardise this provision across the six NCI Acts which is discussed in greater detail above in Item 3.

Item 48 - Section 42

218. Item 48 would replace section 42 - Delegation, which currently provides a power for the Minister to delegate all of the Minister's functions or powers under the Act (as discussed in Item 1 above) without limiting the powers that may be delegated or who the delegation can be made to.
219. The amendment to section 42 would substitute this with a standardised provision. Subsection 42(1) would limit delegation to the Secretary of the Department or an SES employee, or acting SES employee, in the Department. Subsection 42(2) would exclude the following powers from delegation: making land or historical material available for the Museum (section 8); appointing acting Council members (section 15); or giving directions to the Council (section 41A).
220. The power for the Minister to delegate functions and powers is discussed above in relation to Item 1. It aims to standardise this power across the Acts.

Item 49 - Application, saving and transitional provisions

221. Item 49(1) would provide that the amendments of sections 9 and 9A of the NMA Act made by Schedule 2 apply where the Council resolves, on or after the commencement of this item, that historical material be disposed of. Disposal of historical material following a Council resolution on or after commencement of the Bill would therefore need to be made in compliance with sections 9 and 9A, if required.
222. Item 49(2) would provide that section 12 of the NMA Act, as in force immediately before the commencement of this item, would continue to apply on and after that commencement in relation to a direction in force under that section immediately before that commencement. This would preserve any direction in force made under section 13(3A) by the Minister to the Council.
223. Item 49(3) would provide that subsection 13(3A) of the NMA Act, as inserted by Schedule 2, would apply in relation to an appointment made under subsection 13(2) of that Act on or after the commencement of this item, whether a term of previous appointment referred to in paragraph 13(3A)(b) of that Act occurred before, on or after

that commencement. Subsection 13(3A) would provide for the introduction of a maximum of 9 years' service in total by individual Council members and the Chairperson. This item would provide that subsection 13(3A) would apply to an appointment made from commencement of the Act, but that any periods of previous appointment that occurred before, on or after that commencement would count towards this 9 year maximum period. The amendment would not impact on the terms of any current appointments.

224. Item 49(4) would provide that the repeal and substitution of section 37 of the NMA Act made by Schedule 2 would not affect the validity of an approval in force under that section immediately before the commencement of this item. Currently, section 37 requires the Minister to provide approval for the Museum to enter into certain contracts or for entering into certain leases for land. This item would provide that the validity of an approval already in force will not be affected.
225. Item 49(5) would provide that subsection 37(3) of the NMA Act, as substituted by Schedule 2, would apply on and after the commencement of this item in relation to contracts entered into before, on or after that commencement. This would mean that ministerial approval would not be required in relation to contracts for the supply of a service for the day-to-day operations of the Museum, whether the relevant contract was entered into before, on or after commencement of the Bill

National Portrait Gallery of Australia Act 2012 (NPGA Act)

Item 50 - At the end of Part 3

226. Item 50 would add section 29A which provides a delegation power for the Board. Section 29A(1) would enable the Board to delegate, in writing, its power under section 11 of the Act.
227. Section 11 of the NPGA Act relates to the disposal of works of art and related material. Subsection 11(1) enables the Board to resolve that a work of art or related material in the national collection may be disposed of by sale, exchange, gift or destruction if the Board is satisfied that the work of art or material is: unfit for that collection; or is not required as part of that collection. Subsection 11(2) prevents disposal by destruction unless the work of art or related material has no saleable value. Subsection 11(3) would provide the power to dispose of the work of art or related material but is subject to section 47 - Restrictions on financial transactions.
228. Section 29A would enable the Board to delegate this power to (a) the Director; (b) a Board member; or (c) an SES employee, or acting SES employee, of the NPGA. It would note that Sections 34AA to 34A of the AI Act contain provisions relating to delegations.
229. Subsection 29A(2) would require the delegate, when exercising a delegation, to comply with any written directions of the Board. Subsection 29A(3) would preserve the delegation where there is change to the membership of the Board. Subsection 29A(4) would enable the delegation to be revoked by the Board.

230. This amendment would provide flexibility in the management of the disposal of works of art and related material, should the Board wish to delegate such a power.

Item 51 - Part 5

231. Item 51 would repeal Part 5 which relates to Planning. Part 5 specifically relates to the corporate plan and requires under subsection 44(1) that the plan include any matters as the Minister requires. Subsection 44(2) provides the Minister with a power to give the Board written guidelines for the Board in determining whether a matter is covered in the plan and that such a guideline is not a legislative instrument.
232. The Bill seeks to remove provisions over and above the requirements of the PGPA Act in relation to planning and reporting as discussed in Item 6. Item 51 would remove an express provision regarding the corporate plan that does not apply to other NCIs and is not required under PGPA Act. Should the Minister wish to direct the Gallery, a general power to give directions is available under section 50.

Item 52 - Section 47

233. Item 52 would replace section 47 with a standardised provision relating to restrictions on financial provisions which aims to align the six NCI Acts as discussed in Item 9 above.
234. Subsection 47(1) would introduce the six standardised provisions which are subject to thresholds stated in regulations, at or below which, the NCI is not required to seek the approval of the Minister prior to entering a contract. The items would be: (a) the acquisition of a portrait, another work of art or related material; (b) the disposal of a portrait, work of art or related material; (c) the acquisition of property, right and privilege, other than a portrait; (d) the disposal of property, right or privilege, other than a portrait; (e) the construction of a building; and (f) entry into a lease of land for a period exceeding 10 years. The first five items (a) to (e) would be subject to value thresholds prescribed in the respective regulations.
235. The existing subsection 47(1) included four of those provisions. Item 52 would specify two new provisions: (a) the acquisition of a portrait, another work of art or related material; and (b) the disposal of a portrait, another work of art or related material.
236. With the exception of paragraph 47(1)(f), all items in subsection 47(1) would be subject to a threshold value prescribed in Regulations, aligning the Gallery with all other NCIs. The existing threshold for the Gallery prescribes \$1 million and this Bill seeks to prescribe in Regulations and amount of \$2 million which would align the NPGA with most other NCIs. Paragraph 47(1)(f) would not be subject to a monetary threshold.
237. Subsection 47(2) would provide that approval by the Minister under subsection 47(1) is not a legislative instrument. The provision would be merely declaratory of the law rather than prescribing a substantive exemption from the requirements of the *Legislation Act 2003*.
238. Subsection 47(3) would introduce a new provision that exempts from the thresholds, any contracts that are for day-to-day operations ie. essential operational services such as

utilities, security, cleaning and routine general maintenance. As the value for a particular service is considered on a cumulative basis, multi-year procurements regularly exceed the applicable threshold where they are extended or renewed. This requires new approval by the Minister on each occasion and can present a risk, for example, where there are time limitations to secure discounts, or where a whole of Government agreement is being negotiated. Prior to entering into an arrangement, NCIs seek independent expert advice on the terms of arrangements as needed to ensure value for money.

239. Subsection 47(4) would introduce an exemption for the acquisition and disposal of investments. This would support the amendment in Schedule 1 to provide the power to NCIs to invest revenue from donations more broadly than permitted by the PGPA Act.
240. Given the responsibility of governing bodies to manage investment activities within the parameters of the investment policy required under the Bill, and that only donated funds can be used, and therefore low risk to the operations of NCIs, a threshold for ministerial approval for transactions related to investments is considered contrary to the intention of the newly introduced investment provisions.

Item 53 - Application and savings provisions

241. Item 53(1) would provide that the repeal and substitution of section 47 of the NPGA Act made by Schedule 2 would not affect the validity of an approval in force under that section immediately before the commencement of this item. Currently, section 47 requires the Minister to provide approval for the NPGA to enter into certain contracts or certain leases for land. This item would provide that the validity of an approval already in force would not be affected.
242. Item 53(2) would provide that subsection 47(3) of the NPGA Act, as substituted by Schedule 2, applies on and after the commencement of this item in relation to contracts entered into before, on or after that commencement. This would mean that ministerial approval would not be required in relation to contracts for the supply of a service for the day-to-day operations of the NPGA, whether the relevant contract was entered into before, on or after commencement of the Bill.