Screen Australia (Transfer of Assets) Bill 2010

Moira Coombs
Law and Bills Digest Section
John Gardiner-Garden
Social Policy Section

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Screen Australia (Transfer of Assets) Bill 2010

Date introduced: 17 November 2010.
House: House of Representatives
Portfolio: Arts

Commencement: Sections 1 to 4 and Schedule 2 the day after Royal Assent. Schedule 1, items 1-3, 8 on 1 July 2011. Schedule 1, items 4-7 immediately after Schedule 1, items 1-3 commences and Schedule 1, items 9-12 immediately after Schedule 1, item 8 commences.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bills home page, or through http://www.aph.gov.au/bills/. When bills have been passed they can be found at the ComLaw website, which is at http://www.comlaw.gov.au.

Purpose

The purpose of the Screen Australia (Transfer of Assets) Bill 2010 is:

- to amend the Freedom of Information Act 1982, the National Film and Sound Archive Act 2008 and Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008 to incorporate the new form of name: the National Film and Sound Archive of Australia (NFSAA);
- to transfer part of Screen Australia’s film library and associated assets and liabilities to the NFSAA;
- to provide for the transfer of certain Screen Australia staff to the NFSAA as APS employees.

Background

The National Film and Sound Archive and Screen Sound Australia, have their origins in bodies set up many years ago.

National Film and Sound Archive’s origins can trace back to 1935 when the National Film and Speaking Record Library was established as part of the then Commonwealth National Library. It evolved into the National Film Archive and the Sound Recording Collection in the National Library. In April 1984 the Hawke Government establish the National Film and Sound Archive as a separate institution, with its own council. The transfer of National Library assets was concluded in 1988.

Screen Sound Australia can trace its origins back to a combining of the functions of the Australian Film Commission (AFC), established by the Australian Film Commission Act 1975 and the Film Finance Corporation and Film Australia (formerly part of the AFC), both established in 1988.

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Following David Gonski’s 1997 report, *Review of Commonwealth Assistance to the Film Industry*, which found significant functional duplication between the Commonwealth-funded film agencies, some rationalisation of film support agencies seemed inevitable. For a while, however, all that changed were the names. The NFSA changed its name to ‘ScreenSound Australia’ (SSA) in 1999 and in 2000 its name was adjusted to ‘ScreenSound Australia, the National Screen and Sound Archive’.

In 2003 the Commonwealth *Review of Cultural Agencies* report recommended, among other things, the integration of the SSA and the AFC. In a joint media release of 13 May 2003, Senator the Hon Richard Alston, Minister for Communications, Information Technology and the Arts and Senator the Hon Rod Kemp, Minister for the Arts and Sport announced the Government’s intention to effect such an amalgamation.

Following amendments to the *Australian Film Commission Act 2003* which came into force on 1 July 2003 the National Screen and Sound Archive (‘ScreenSound Australia’) ceased to be a semi-autonomous entity within the Department of Communications, Information Technology and the Arts and became an integrated branch, later a division, of the Australian Film Commission (AFC). This merger with the AFC was a smaller body, funded as a promotional exercise, never gained wide support, and many concerns were expressed with respect to possible job losses, functional break ups and program relocations. A campaign started for the granting of separate statutory authority status for the NFSA and the opposition promised an Australian Labor Party Government would establish the National Film and Sound Archive as a Statutory Authority.1

In December 2004, after the return of the Howard Government, ScreenSound Australia reverted to its original name, National Film and Sound Archive, but disquiet over the 2003 merger continued. In September 2007 the Government announced its intention to create a new agency, Screen Australia, out of the Film Finance Corporation, the Australian Film Commission and Film Australia, and to ‘de-merge’ and give statutory recognition to the National Film and Sound Archive.2 An Exposure Draft of a Bill was released for comment but no report on the consultation process was released before the Federal election was called in October 2007.

The Australian Labor Party committed to establishing Screen Australia and de-merging the NFSA in its 2007 Election Policy *New Directions for the Arts*. Following the November 2007 election, the new Rudd Government implemented an election promise to make NFSA a statutory authority. On 8 February 2008 the Minister for Environment, Heritage, and the Arts, Hon. Peter Garrett, released a Screen Australia Bill Exposure Draft that was nearly identical to that released by the previous

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2.  G Brandis (Minister for the Arts and Sport), *Consultation on Australian Government legislation to create a new screen agency - Screen Australia*, media release, 7 September 2007.

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government. The National Film and Sound Archive Act 2008 was passed on 13 March 2008 and the new Screen Australia and a statutory NFSA commenced operation on 1 July 2008.

Some minor issues regarding ownership of some library assets and of the most desirable name for the new statutory National Film and Sound Archive have surfaced since 2008, and it is these matters that this Bill now seeks to address.

The Minister in his second reading speech outlines the principal reasons for the transfer of the film library and associated assets and liabilities to the National Film and Sound Archive:

The agencies have now successfully completed over two years of operations as separate statutory authorities. However, in that time it has become clear that the functions associated with the portion of Screen Australia’s film library produced by the former Film Australia Ltd and its predecessor agencies, and related sales and digital learning functions, are now best placed with the NFSA. This film library is a substantial archival resource and the government considers that the NFSA, as Australia’s premier collecting institution for audiovisual material, should be responsible for preserving and supporting the development of this resource. The transfer of this film library and digital learning functions will also enhance and complement the NFSA’s new direction of providing greater online content and improving access to its collection of audiovisual materials.

He explained that:

Screen Australia’s film library amongst other things consists of a collection of approximately 5,000 films (and associated materials) produced by the former Film Australia Ltd and its predecessor agencies. This part of the film library is one of the largest and most historically significant sources of archival, documentary and stock footage in Australia, reflecting a century of our history. The sales function relates to the commercial use of the film library’s holdings. The digital learning function is a collection of primarily online educational resources which uses audiovisual material and stills within this film library and associated teaching materials which are suitable for primary, secondary, tertiary and lifelong learning.

The Minister also offered two reasons for the NFSA name change:

In relation to the change in name for the NFSA, the addition of ‘of Australia’ to the end of its name will bring the agency’s name into line with the majority of the Australian government collecting institutions such as the National Gallery of Australia, the National Museum of Australia


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and the National Library of Australia. The change will enable the agency to be identified internationally as Australia’s premier audiovisual collecting institution.4

**Committee consideration**

The Senate Selection of Bills Committee resolved to recommend that the Screen Australia (Transfer of Assets) Bill 2010 not be referred to committees.5

The Senate Standing Committee for the Scrutiny of Bills has drawn attention to two provisions in the Bill. Schedule 2 item 12 provides that the Minister may determine in writing that a provision of proposed sections 9, 10 or 11 does not apply to instruments, proceedings, records or documents set out in the determination. The Committee has sought the Minister’s advice as to whether the provision will have any adverse effect on a person. At the time of writing, the Minister has yet to respond to the Committee’s concerns.

Attention was also drawn to Schedule 2, item 13 which involves the transfer of appropriated money. The Committee noted its ‘view that the removal of parliamentary scrutiny through the avoidance of disallowance and sunsetting is a serious matter but noted also that the provision is consistent with the purpose of the Bill which the Senate will consider as a whole.6

**Financial implications**

The Explanatory Memorandum states that the bill will have minimal impact on Commonwealth expenditure.7

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5. Senate Selection of Bills Committee, Report no. 15 of 2010, 26 November 2010; the House of Representatives made a similar decision in its report of 17 November 2010.

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Key provisions

Schedule 1—Name Change

Freedom of Information Act 1982—Amendments

Section 13 in the Freedom of Information Act 1982 refers to documents in certain institutions. Items 1 and 2 propose amendment to paragraph 13(1)(e) to substitute the existing form of name with the new name National Film and Sound Archive of Australia.

National Film and Sound Archive Act 2008 and Screen Australia and the National Film and Sound Archive (Consequential and Transitional Provisions) Act 2008—Amendments

Item 3-12 propose bulk amendments to the two Acts to substitute the existing name with the new name where it occurs – both in the text of the legislation and its headings. References to NFSA are also to be replaced with NFSAA wherever it occurs.

Schedule 2—Screen Australia

Part 1—Certain assets and liabilities of Screen Australia transferred to NFSAA

Item 1 defines terms relevant to this Part. The terms defined are asset, FAL, film library asset, film library liability, liability, NFSAA and Screen Australia.

Transfer of assets and liabilities

Proposed section 2 sets out the conditions under which assets and liabilities are to transfer to the National Film and Sound Archive of Australia (NFSAA)

Proposed subsection 2(2) provides that at the transition time (start of 1 July 2011) the film library assets and liabilities of Screen Australia become the assets and liabilities of NFSAA without the need for any conveyance, transfer or assignment. The NFSAA becomes the successor in law to these assets and liabilities.

Proposed subsection 2(3) provides that the Minister may determine that specified assets and liabilities connected with the film library are to become assets and liabilities of the NFSAA. Proposed subsection 2 (4) provides that the specified assets and liabilities (other than film library assets or liabilities) of Screen Australia will transfer to the NFSAA without any need for conveyance, transfer

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or assignment on 1 July 2011 (the transition time). The NFSAA becomes the successor in law in relation to the assets and liabilities.

Proposed subsection 2(5) provides that the Minister may determine before the transition time that certain specified assets and liabilities remain with Screen Australia and do not become assets and liabilities of NFSAA.

Proposed subsection 2(7) provides that determinations under proposed subsections 2(3) and 2(5) are not legislative instruments and therefore are not subject to parliamentary scrutiny.

Certificates for vesting of assets

Proposed subsection 3(1) applies if a film library asset is vested in the NFSAA and a certificate is lodged with an assets official that is signed by the Minister, it identifies the asset and states that the asset is vested in the NFSAA under this Act. An assets official may deal with and give effect to the certificate as if it were the appropriate instrument for such transactions. The assets official may make entries in the register as necessary (proposed subsection 3(2)). The certificate is not a legislative instrument (proposed subsection 3(3)).

Exemption from State and Territory Stamp Duty

Proposed section 5 provides that State or Territory stamp duty is not payable in relation to an exempt matter or anything connected with an exempt matter. Proposed subsection 5(2) defines an exempt matter. An exempt matter relates to the vesting of a film library asset or liability under proposed subsections 2(2) or 2(4) or the operation of this Schedule in any other respect. The Minister may certify in writing that a specified matter is an exempt matter or that a specified thing is connected with a specified exempt matter (proposed subsection 5(3)).

Part 2—Staff of Screen Australia

Transfer of Screen Australia non-APS employees to the NFSSA as APS employees

Proposed subsection 6(1) applies to a person who is an employee of Screen Australia immediately before the transition time and is covered by a determination made under section 72 of the Public
Service Act 1999 and which at the transition time enables the person to be transferred to the 
NFSAA as an employee under the Public Service Act 1999.

Proposed subsection 6(2) provides that any accrued entitlements to annual leave and 
personal/carer’s leave which a person had accrued in Screen Australia will transfer with the person 
to NFSAA. Proposed subsection 6(3) provides that for the purposes of unpaid parental leave, a 
person engaged as a member of staff of NFSAA under the Public Service Act 1999 is taken for the 
purpose of Division 5 of Part 2-2 of the Fair Work Act 2009, to have continuous service as an officer 
with Screen Australia. Proposed subsection 6(4) provides that a person transferred from Screen 
Australia to the NFSAA is taken to have had continuous service.

Part 3—Things done by, references in instruments to, legal proceedings of and 
records or documents of Screen Australia

Proposed subsection 8(1) applies to a thing done by or in relation to a film library asset or liability by 
Screen Australia which ultimately becomes an asset or liability of NFSSA. The Minister may 
determine in writing that after the transition time the thing is taken to have been done by or in 
relation to NFSAA (proposed subsection 8(2)).

Proposed subsection 9(1) applies to an instrument in force immediately before the transition time 
and contains a reference to Screen Australia. Any such references to a film library asset or liability or 
an asset or liability of Screen Australia or a thing done by or in relation to Screen Australia is taken to 
be a reference to NFSAA (proposed subsection 9(2)).

Proposed subsection 9(3) provides that if proposed subsection 9(2) does not apply, the Minister 
may determine in writing that a reference to Screen Australia has effect at or after the transition 
time as if it were a reference to the NFSAA. Proposed subsection 9(7) defines an instrument as 
including a contract, deed, undertaking or agreement and a notice, authority, order or instruction 
and an instrument made under an Act or regulations but does not include this Act or instruments 
made under the Act.

Proposed section 10 relates to legal proceedings of Screen Australia. Proposed subsection 10(1) 
applies to proceedings pending in any court or tribunal before the transition time in which Screen 
Australia was a party. Proposed subsection 10(2) provides that if the proceedings relate to a film 
library asset or liability or any other asset or liability that subsequently is vested in the NFSAA then at

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8. Paragraph 72(1)(c) of the Public Service Act 1999 enables the Public Service Commissioner to determine in writing 
that non-APS employees cease to be employed as non-APS employees and become engaged as APS employees in a 
specified Agency.

9. Fair Work Act 2009, Part 2-2, Division 5. Part 2-2 sets out the National Employment Standards while Division 5 of Part 
2-2 specifically deals with parental leave and related entitlements.

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or after transition time, the NFSAA will be substituted for Screen Australia as a party to the proceedings.

Part 4—Other Matters

Transfer of Appropriated Money

Proposed section 13 relates to the transfer of appropriated money. Proposed 13(1) provides that the Finance Minister may determine that a part of the amount for Screen Australia in the Appropriation Act after transition time may be read as an amount for the NFSAA. The determination must relate to the operation of this Schedule.

Acquisition of Property

Proposed subsection 14(1) provides that if there is an acquisition of property as a result of the operation of this Act, the Commonwealth is liable to pay reasonable compensation. If there is no agreement on the amount payable by the Commonwealth, the person may institute proceedings in a court of competent jurisdiction to recover reasonable compensation (proposed subsection 14(2)).

Regulations

Proposed subsection 16(1) provides that the Governor-General may make regulations prescribing matters required or necessary to be prescribed to give effect to the Act. Regulations may be made prescribing transitional matters:

- amendments or repeals made by this Act
- employment matters relating to persons employed immediately before transition time by Screen Australia who are then employed by the NFSAA at or after transition time
- Approved leave of employees or staff of Screen Australia before transition time.

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