



Australian Astronomical Observatory (Transitional Provisions) Bill 2009

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Law and Bills Digest Section

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Australian Astronomical Observatory (Transitional Provisions) Bill 2009

Date introduced: 25 November 2009

House: House of Representatives

Portfolio: Innovation, Industry, Science and Research

Commencement: Sections 1 to 3 commence on Royal Assent. Schedules 1 and 2 commence on 1 July 2010 at the same time as the *Australian Astronomical Observatory Act 2009*.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

This Bill repeals the *Anglo-Australian Telescope Agreement Act 1970* and makes transitional arrangements for the establishment of the Australian Astronomical Observatory (the observatory) as a unit within the Department of Innovation, Industry, Science and Research (the Department) by providing (amongst other things) for the transfer of employees, assets and liabilities from the Anglo-Australian Telescope Board (the Board) to the Department.

Background

This Bill is one of two Bills that establishes the observatory within the Department and disbands the Board. For detailed background information see the [Bills Digest](#) for the Australian Astronomical Observatory Bill 2009.¹

Financial implications

See the Explanatory Memorandum to the Australian Astronomical Observatory Bill 2009 for details of the financial impact of these Bills.

1. M Coombs, *Australian Astronomical Observatory Bill 2009*, Bills digest, no. 95, 2009–10, Parliamentary Library, Canberra, 2010, viewed 3 February 2010, <http://www.aph.gov.au/library/pubs/bd/2009-10/10bd095.pdf>

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Main provisions

Schedule 1—*Anglo-Australian Telescope Agreement Act 1970*

Proposed section 1 of Schedule 1 repeals the *Anglo-Australian Telescope Agreement Act 1970* in its entirety.²

Schedule 2—Transitional provisions

Part 1—Introduction

Proposed section 1 of Schedule 2 contains a number of definitions relating to the operation of Schedule 2.

Part 2—Transfer of assets and liabilities

Proposed section 2 applies to the assets of the Anglo-Australian Telescope Board immediately before the transition time.³ **Proposed subsection 2(2)** vests the assets of the Board at transition time in the Commonwealth. The Commonwealth becomes the successor in law, that is, the assets become the property of the Commonwealth without any conveyance, transfer or assignment.

Proposed section 3 applies to the liabilities of the Board immediately before transition time. **Proposed subsection 3(2)** provides that the liabilities of the Board become the liabilities of the Commonwealth. The Commonwealth becomes the successor in law for the liabilities of the Board, that is, the Commonwealth becomes responsible for those liabilities without any conveyance, transfer or assignment.

Transfers of land may be registered

Proposed section 4 of Schedule 2 applies if any land vests in the Commonwealth under Part 2 and a certificate is lodged with a land registration official that is signed by the Minister and identifies the land and states that the land vests in the Commonwealth under Part 2 of Schedule 2. **Proposed subsection 4(2)** allows the land registration official to register the matter and deal with and give effect to the certificate.⁴ A certificate under

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2. Note that proposed sections 12 and 13 of Schedule 2 nonetheless in effect retain obligations arising under sections 14 and 19 of the *Anglo-Australian Telescope Agreement Act 1970* relating to inspection, audit, and the preparation of final financial statements that began on or before 1 July 2009.
 3. ‘Transition time’ is defined in proposed section 1 of Schedule 2 as ‘the commencement of this Schedule’ being 1 July 2010.
 4. The Explanatory Memorandum notes that ‘as of the date of introduction of this Bill to the Parliament, the Board has no registered assets in land to be transferred and that this item is

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paragraph 4(1)(b) is not a legislative instrument which means that it is not subject to the disallowance procedures in the *Legislative Instruments Act 2003* (**proposed subsection 4(3)**).

Certificates relating to vesting of assets other than land

Proposed section 5 of Schedule 2 applies if any asset other than land vests in the Commonwealth under Part 2 and a certificate is lodged with the appropriate assets official⁵ and the certificate is signed by the Minister, identifies the asset and states that the asset vests in the Commonwealth under Part 2 of Schedule 2. **Proposed subsection 5(2)** provides that the assets official may deal with and give effect to the certificate as if it were an instrument that is proper and appropriate for transactions in relation to assets of that kind and to make any necessary changes to the register. **Proposed subsection 5(3)** states that the certificate under paragraph 5(1)(b) is not a legislative instrument and therefore not subject to the *Legislative Instruments Act 2003*.

Part 3—Transfer of other matters

Proposed section 6 is a transitional provision which provides that anything done by, or in relation to, the Board before the transition time has effect after the transition time as if it had been done by, or in relation to, the Commonwealth.⁶

Proposed section 7 applies if the Board was a party in any proceedings pending before a court or tribunal immediately before the transition time. **Proposed subsection 7(2)** substitutes the Commonwealth for the Board as a party to the proceedings from the transition time.

Proposed section 9 is a transitional provision which provides that if a complaint was made to the Ombudsman or an investigation was underway in relation to an action taken by the Board and the matter had not been finalised by the Ombudsman immediately before the transition time, then the *Ombudsman Act 1976* applies after the transition time as if the action had been taken by the Department. The Department will in other words be the responsible party and not the Board.

Proposed subsection 10(1) provides that if there is a reference to the Board in an instrument that was in force immediately before the transition time and the instrument is

not expected to be used': Explanatory Memorandum, Australian Astronomical Observatory (Transitional Provisions) Bill 2009, p. 5.

5. The Explanatory Memorandum clarifies that an assets official is 'the person or authority who, under a law of the Commonwealth, a State or a Territory, a trust instrument or otherwise, has responsibility for keeping a register in relation to the assets of the kind concerned': *Ibid.*, p. 6.
6. *Ibid.*, p. 6.

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of a kind mentioned in paragraph 10(1)(b), then the reference has effect as though it were a reference to the Commonwealth. The types of instruments listed in paragraph 10(1)(b) include an instrument:

- made by the Board
- to which the Board was a party
- that was given to, or in favour of, the Board
- where any right or liability accrues or may accrue to the Board, and
- any other instrument in which a reference is made to the Board.

Proposed subsection 10(2) defines *instrument* and *exempt instrument*.

Proposed section 11 provides that after the transition time, references to the Board are to be read as references to the Department for the purposes of an Appropriation Act. **Proposed subsection 11(2)** defines *Appropriation Act* as an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

Part 4—Finance and annual report

Proposed subsection 12(1) provides that section 14 of the *Anglo-Australian Telescope Agreement Act 1970*, although repealed by this Act, continues to apply in relation to the Board being subject to an inspection and audit for the financial year that commenced on or before 1 July 2009. **Proposed subsection 12(2)** states that subsection 12(1) is subject to subsections 12(3) and 12(4).

Proposed subsection 12(3) provides that a reference in section 14 to records of the Board includes a reference to records transferred to the Department under proposed section 8 of Schedule 2. **Proposed subsection 12(4)** provides that reference in section 14 to an employee of the Board includes a reference to an employee in the Department.

Proposed section 14 provides that the responsible financial officer must, as soon as practicable after the end of the financial year, prepare and submit a report to the Minister for presentation to the Parliament on the operations of the Board for the financial year that began on 1 July 2009.

Proposed subsection 15(1) provides that the Secretary may appoint in writing a financial officer for the purposes of Schedule 2. The financial officer must be an SES employee or an acting SES employee, or hold or be acting in an Executive Level 1 or 2 or equivalent position (**proposed subsection 15(2)**).⁷

7. 'SES employee' is defined in section 34 of the *Public Service Act 1999* as 'those APS employees who are classified as SES employees under the Classification Rules'. See also section 17AA of the *Acts Interpretation Act 1901*.

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Part 5—Employees of the Board

Proposed subsection 16(1) defines a *transferring employee*. **Proposed subsection 16(2)** provides that if a transferring employee is covered by a designated agreement immediately before the transition time then that agreement covers the Commonwealth and the transferring employee in relation to observatory work and no other agreement will apply to that employee. The agreement has effect as if it had been made with the Secretary. If the transferring employee becomes an SES employee after the transition time, then paragraphs 16(2)(c), (d) and (e), relating to the designated agreement, cease to apply to the transferring employee.

Proposed subsection 16(3) defines a *new employee*. If a designated agreement covers the Commonwealth because of subsection 16(2) and after the transition time a person becomes a new employee, then that agreement will cover the Commonwealth and the new employee in relation to AAO work and no other agreement will apply (**subsection 16(4)**).

Proposed section 17 relates to the accrued entitlements of employees of the Board and their transfer to the Department. **Proposed subsection 17(2)** provides that a person's accrued entitlement to benefits as an APS employee immediately before transition time will be equivalent to their entitlement as an employee of the Board. That is, the entitlements will not vary between the Board before transition time and the Department after transition time. **Proposed subsection 17(3)** states that the service as an employee of the Board will be taken for all purposes to have been continuous with the person's service as an APS employee.

Proposed section 19 of **Schedule 2** applies to employees of the Board who, before transition time, had suffered an injury resulting in an incapacity for work or impairment. **Proposed subsection 19(2)** applies certain sections of the *Safety, Rehabilitation and Compensation Act 1988* after the transition time as if the employee were employed by the Department. **Proposed subsection 19(3)** provides that for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*, the Department is the relevant employer of the employee.

Part 6—Miscellaneous

Proposed section 20 of **Schedule 2** relates to exemption from stamp duty and other state or territory taxes. **Proposed subsection 20(1)** provides there is no stamp duty or tax payable under the law of a state or territory for an 'exempt matter'. **Proposed subsection 20(2)** defines what is meant by an 'exempt matter'. 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 20(3)**).

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Proposed section 21 relates to the acquisition of property by the Commonwealth on ‘just terms’ under paragraph 51(xxxi) of the Constitution. **Proposed subsection 21(1)** provides that if property is acquired by the Commonwealth other than on ‘just terms’, the Commonwealth is liable to pay reasonable compensation to the person.

Proposed subsection 21(2) provides that if there is no agreement on the amount of compensation, the person may institute proceedings in a court of competent jurisdiction for reasonable compensation to be determined by the court. **Proposed subsection 21(3)** defines ‘acquisition of property’ and ‘just terms’.

Proposed section 22 relates to the authenticity of certificates made under Schedule 2. Certificates made under this Schedule are taken to be properly given unless the contrary is established. **Proposed subsection 23(1)** allows the Minister to delegate any or all of his/her powers under Schedule 2 to a person. That person must be the Secretary or an SES employee or an acting SES employee (**proposed subsection 23(2)**).

Proposed section 24 provides that the Governor-General may make regulations relating to matters arising out of the repeal of the *Anglo-Australian Telescope Agreement Act 1970*.

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