



# **Commonwealth Serum Laboratories Act 1961**

**Act No. 38 of 1961 as amended**

This compilation was prepared on 28 March 2008  
taking into account amendments up to Act No. 8 of 2008

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# Contents

<b>Part 1—Preliminary</b>	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Interpretation .....	1
5 Subsidiaries .....	2
6 Operation of Act.....	2
7 Extension to external Territories .....	2
<b>Part 2—Creation of capital structure and other steps prior to conversion of CSL into a public company</b>	3
8 Share capital of CSL.....	3
9 Issue of shares in CSL .....	3
10 CSL to apply to be registered as company etc. ....	4
11 New name of CSL .....	5
<b>Part 3—Conversion of CSL into a public company</b>	6
12 Effect of Part—summary .....	6
13 CSL taken to be registered under Companies Act .....	6
14 Memorandum and Articles of CSL.....	7
15 Membership of CSL .....	7
16 Past members.....	7
19 Operation of section 25B of Acts Interpretation Act .....	8
<b>Part 3A—National interest restrictions on CSL Limited</b>	9
<b>Division 1—Purpose and interpretation</b>	9
19A Purpose .....	9
19B Interpretation .....	9
<b>Division 2—Requirements regarding CSL’s articles of association</b>	14
19C CSL’s articles of association to include certain provisions.....	14
19D Inconsistent alteration to CSL’s articles of association to have no effect .....	15
19E CSL to maintain a register of foreign-held voting shares .....	15
19F Injunctions in relation to contraventions of a mandatory article or section 19E .....	16
19G Consent injunctions .....	17
19H Interim injunctions.....	17
19J Factors relevant to the grant of a restraining injunction.....	17
19K Factors relevant to the grant of a mandatory injunction.....	17
19L Undertaking as to damages not required.....	18
19M Other orders.....	18

---

<b>Division 3—Prohibition on disposal etc. of the Broadmeadows facility</b>	19
19N Declaration of Broadmeadows land.....	19
19P Prohibition on disposal etc. of Broadmeadows facility .....	19
<b>Division 4—Injunctions to ensure performance of plasma products contracts</b>	21
19Q Injunction to ensure performance of plasma products contracts .....	21
19R Consent injunctions .....	22
19S Interim injunctions.....	22
19T Factors relevant to the grant of a restraining injunction.....	22
19U Factors relevant to the grant of a mandatory injunction.....	23
19V Undertakings not required .....	24
19W Other orders.....	24
<b>Division 5—Miscellaneous</b>	25
19X Delegation by Minister .....	25
19Y Jurisdiction of courts .....	25
19Z This Part to have effect despite the Corporations Act.....	25
19ZA Remedies under this Part to be additional remedies .....	25
<b>Part 5—Staff matters</b>	26
26 Employment of staff members continues after transition .....	26
27 Act not to affect certain matters relating to staff members .....	26
28 Effect of sections 26 and 27.....	27
29 Variation of terms and conditions of employment.....	27
<b>Part 6—Taxation matters</b>	29
31 Interpretation .....	29
32 Exemptions relating to exempt matters .....	29
33 Minister may certify in relation to exemptions .....	29
34 CSL taken to have had share capital for purposes of Income Tax Assessment Act .....	30
35 Treatment of acquisitions of transferring assets for purposes of Income Tax Assessment Act .....	30
<b>Part 7—Miscellaneous</b>	32
36 CSL not public authority etc.....	32
37 Judicial notice of CSL’s seal .....	32
38 Compensation for acquisition of property .....	32
41 Delegations.....	33
42 Regulations.....	33
<b>Notes</b>	35

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# An Act relating to the constitution of CSL as a public company, and for other purposes

## Part 1—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Commonwealth Serum Laboratories Act 1961*.

### 2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

### 3 Interpretation

In this Act, unless the contrary intention appears:

*articles* means articles of association.

*CSL* means the body corporate that, at the commencement of this section, exists, because of this Act, under the name “Commonwealth Serum Laboratories Commission”.

*employment*, in relation to a staff member, means employment by, or service with, CSL.

*member*, in relation to CSL at any time before the transition, includes a Commissioner and the Managing Director.

*memorandum* means memorandum of association.

*share*, in relation to CSL, means a share in the share capital of CSL.

*staff member* means a person who, immediately before the transition is:

- (a) the Managing Director of CSL; or
- (b) an officer or employee of CSL.

*subsidiary* has the meaning given by section 5.

Section 5

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**transferring asset** means an asset to which a determination under paragraph 31A(1)(a) applies.

**transferring liability** means a liability to which a determination under paragraph 31A(1)(b) applies.

**transition** means the commencement of Part 3, being the Part inserted by section 13 of the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990*.

**wholly-owned subsidiary**, in relation to CSL, means a body corporate:

- (a) that is a subsidiary of CSL; and
- (b) none of whose members is a person other than:
  - (i) CSL; or
  - (ii) a body corporate that is, under any other application or applications of this definition, a wholly-owned subsidiary of CSL; or
  - (iii) a nominee of CSL or of a body of a kind referred to in subparagraph (ii); and
- (c) no share in which is beneficially owned by a person other than:
  - (i) CSL; or
  - (ii) a body of a kind referred to in subparagraph (b)(ii).

## 5 Subsidiaries

For the purposes of this Act, the question whether a body corporate is a subsidiary of another body corporate shall be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined under the *Corporations Act 2001*.

## 6 Operation of Act

This Act applies both within and outside Australia.

## 7 Extension to external Territories

This Act extends to all external Territories.

## **Part 2—Creation of capital structure and other steps prior to conversion of CSL into a public company**

### **8 Share capital of CSL**

- (1) As from the commencement of this Part, CSL is to have an authorised and issued share capital.
- (2) The amount of the issued share capital must be equal to the amount that subsection 9(1) requires to be applied as mentioned in that subsection.
- (3) The share capital must be divided into shares of \$1 each.
- (4) The share capital may be divided into classes of shares.
- (5) As from the transition, this section has effect subject to the *Corporations Act 2001*.

### **9 Issue of shares in CSL**

- (1) As soon as practicable after the commencement of this Part, CSL must apply the capital that it has at that commencement in paying up, in full, shares in CSL.
- (2) If the amount of the capital is not a multiple of \$1, subsection (1) applies as if the amount were reduced to the nearest multiple of \$1.
- (3) As soon as practicable after complying with subsection (1), CSL shall issue the shares paid up under that subsection:
  - (a) to the Commonwealth; or
  - (b) to nominees of the Commonwealth;as the Minister directs in writing.
- (4) Rights may be attached to shares included in a class of shares.
- (5) The issue of shares under subsection (3) discharges in full CSL's obligations to repay the capital to the Commonwealth.

Section 10

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- (6) The shares issued under subsection (3) are to be taken to have been issued for valuable consideration other than cash, being the discharge effected by subsection (5).
- (7) A person is not a member of CSL at any time before the transition merely because the person holds shares in CSL.

**10 CSL to apply to be registered as company etc.**

- (1) CSL must, before the transition:
  - (a) apply to the National Companies and Securities Commission under subsection 85(1) of the *Companies Act 1981* to be registered as a company limited by shares within the meaning of that Act; and
  - (b) apply to the National Companies and Securities Commission under subsection 55(1) of the *Companies Act 1981* for the reservation of the name “Commonwealth Serum Laboratories Limited”; and
  - (c) lodge with the National Companies and Securities Commission a proposed memorandum, and proposed articles, for CSL; and
  - (d) if the rights attached to shares included in a class of shares under subsection 9(4) are not provided for in the memorandum or articles, lodge with the National Companies and Securities Commission the statement referred to in subsection 124(1) of the *Companies Act 1981*.
- (2) Subject to the regulations, the application mentioned in paragraph (1)(a) must be accompanied by the documents required by subsection 85(4) of the *Companies Act 1981* to accompany such an application.
- (3) The applications mentioned in paragraphs (1)(a) and (b) must be made to the National Companies and Securities Commission by delivering them to the office of the Corporate Affairs Commission for the Australian Capital Territory and the documents mentioned in paragraphs (1)(c) and (d) and subsection (2) must be lodged with the National Companies and Securities Commission by lodging them at that office.



- (4) CSL is to be taken to be entitled to make the applications referred to in paragraphs (1)(a) and (b), and to lodge the documents mentioned in paragraph (1)(c) and subsection (2).
- (5) The National Companies and Securities Commission is to be taken:
  - (a) to have been required to reserve the name “Commonwealth Serum Laboratories Limited” under subsection 55(2) of the *Companies Act 1981*; and
  - (b) to have so reserved that name immediately after the making of the application mentioned in paragraph (1)(b).

### **11 New name of CSL**

- (1) On the day immediately before the transition, CSL’s name is, by force of this subsection, changed to “Commonwealth Serum Laboratories Limited”.
- (2) Subsection 65(5) of the *Companies Act 1981* applies in relation to the change of name made by subsection (1) as if:
  - (a) CSL was a company, within the meaning of that Act, when the change was made; and
  - (b) the change was made under that Act.
- (3) This section has effect in spite of anything in the *Companies Act 1981*, but nothing in this section prevents:
  - (a) CSL from later changing its name under section 65 of that Act; or
  - (b) the cancellation, under Division 2 of Part III of that Act, of the registration of a name.

## **Part 3—Conversion of CSL into a public company**

### **12 Effect of Part—summary**

After the commencement of this Part:

- (a) CSL is a company registered under the *Companies Act 1981*; and
- (b) CSL’s name is “Commonwealth Serum Laboratories Limited”; and
- (c) CSL is a public company, and a company limited by shares, within the meaning of that Act; and
- (d) that Act applies, subject to this Act, in relation to CSL.

### **13 CSL taken to be registered under Companies Act**

- (1) The National Companies and Securities Commission is to be taken:
  - (a) to have been required to grant the application mentioned in paragraph 10(1)(a) and to register CSL as a company under subsection 86(2) of the *Companies Act 1981*; and
  - (b) to have granted the application at the commencement of this Part; and
  - (c) to have so registered CSL, at the commencement of this Part:
    - (i) by the name “Commonwealth Serum Laboratories Limited”; and
    - (ii) in accordance with subsections 86(3) and (4) of the *Companies Act 1981*, as a public company, and as a company limited by shares, within the meaning of that Act; and
  - (d) to have registered the name “Commonwealth Serum Laboratories Limited” in relation to CSL at the commencement of this Part, under subsection 55(4) of the *Companies Act 1981*.
- (2) The date of commencement of CSL’s registration as a company under Division 4 of Part III of the *Companies Act 1981* is to be taken to be the day of commencement of this Part.

- (3) For the purposes of Division 4 of Part III of the *Companies Act 1981*, CSL shall be taken to have been on the day before the commencement of this Part, and to be at that commencement, a corporation within the meaning of that Act.

#### **14 Memorandum and Articles of CSL**

- (1) As from the commencement of this Part, the proposed memorandum, and the proposed articles, lodged under paragraph 10(1)(c):
- (a) are respectively the memorandum, and the articles, of CSL; and
  - (b) bind CSL and its members accordingly.
- (2) As from the commencement of this Part, the *Companies Act 1981* applies in relation to CSL's memorandum and articles as if they had been registered as such under that Act.

#### **15 Membership of CSL**

- (1) A person who immediately before the commencement of this Part was, or was acting as, a member of CSL, ceases at that commencement to be, or to act as, such a member.
- (2) Each person who holds shares in CSL at the commencement of this Part becomes, by force of this subsection, a member of CSL at that commencement.
- (3) A person referred to in subsection (2) is, in relation to membership of CSL, entitled to the same rights, privileges and benefits, and is subject to the same duties, liabilities and obligations, as if the person had become a member of CSL under CSL's memorandum and articles.

#### **16 Past members**

For the purposes of Division 2 of Part 5.6 of the *Corporations Act 2001*, a person is not a past member of CSL merely because he or she was a member of the CSL Commission, or acted as a member of the Commission, before the commencement of this Part.

Section 19

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**19 Operation of section 25B of Acts Interpretation Act**

Nothing in this Act or in the *Corporations Act 2001* affects, or is affected by, section 25B of the *Acts Interpretation Act 1901* as that section applies in relation to CSL.

## **Part 3A—National interest restrictions on CSL Limited**

### **Division 1—Purpose and interpretation**

#### **19A Purpose**

The purpose of this Part is to:

- (a) provide for certain matters which affect the national interest in relation to the operations of CSL; and
- (b) provide remedies in relation to some of those matters.

#### **19B Interpretation**

- (1) In this Part, unless the contrary intention appears:

***administering body***, in relation to a CSL body, means:

- (a) a liquidator or provisional liquidator of the CSL body; or
- (b) a receiver, receiver and manager, or other controller, of property of the CSL body; or
- (c) an administrator of the CSL body; or
- (d) an administrator of a deed of company arrangement executed by the CSL body; or
- (e) an administrator (if any) of a compromise or arrangement entered into by the CSL body;

under the *Corporations Act 2001*.

***associate***, in relation to a person, has the meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001* as in force on the commencement of that Act if that Division as so in force were, subject to the following modifications, still in force:

- (a) section 12 of that Act as then in force were modified by omitting paragraphs (1)(b) and (c) and substituting the following word and paragraph:
  - “or (b) whether the primary person is in a position to exercise certain powers in relation to a body corporate;”;
- (b) sections 13 and 14 of that Act as then in force were disregarded.

Section 19B

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***Australian body corporate*** means a body corporate that:

- (a) is incorporated by or under a law of the Commonwealth or of a State or Territory; and
- (b) is substantially owned and, in the opinion of the directors of CSL at the time the matter is considered, effectively controlled by persons who are:
  - (i) Australian individuals; or
  - (ii) Australian government bodies; or
  - (iii) bodies corporate that have been determined to be Australian bodies corporate under a previous application of this definition; or
  - (iv) Australian fund managers.

***Australian citizen*** has the same meaning as in the *Australian Citizenship Act 2007*.

***Australian fund manager*** means the trustee or manager of a fund in which the total interests of Australian individuals, Australian government bodies and Australian bodies corporate represent at least 60% of the total interests in the fund.

***Australian government body*** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) a Commonwealth, State or Territory authority; or
- (c) a local government body (whether incorporated or not) formed by or under a law of a State or a Territory; or
- (d) a person who is a nominee of a body mentioned in paragraph (a), (b) or (c).

***Australian individual*** means an individual who is an Australian citizen or is ordinarily resident in Australia.

***Australian person*** means:

- (a) an Australian individual; or
- (b) an Australian government body; or
- (c) an Australian body corporate; or
- (d) an Australian fund manager.

***Court*** means the Federal Court of Australia.

**CSL** means the body corporate known before the sale day as CSL Limited by whatever name called, and in whatever form that body corporate takes, from time to time.

**CSL body** means CSL or a CSL subsidiary.

**CSL subsidiary** means a body corporate that is a subsidiary of CSL.

**foreign-held voting shares** means:

- (a) voting shares that are acknowledged in writing by the registered owner of those shares to be shares in which a foreign person has a relevant interest; or
- (b) voting shares that the directors of CSL have, after reasonable inquiries, declared to be shares in which a foreign person has a relevant interest.

**foreign person** means a person who is not an Australian person.

**head office**, in relation to CSL, means the place of business of CSL where central management and control are exercised.

**mandatory article** means a provision included in CSL's articles of association in accordance with section 19C.

**registered owner**, in relation to a share, means the person who appears in the register of members as the holder of the shares.

**register of members** has the same meaning as in the *Corporations Act 2001*.

**sale day** has the same meaning as in the *CSL Sale Act 1993*.

**share**, in relation to a body corporate, means a share in the body corporate's share capital.

**voting share** has the same meaning as in the *Corporations Act 2001*.

- (2) For the purposes of this Part, a body corporate is substantially owned by:
  - (a) Australian individuals; or
  - (b) Australian government bodies; or

Section 19B

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- (c) bodies corporate that have been determined to be Australian bodies corporate under a previous application of the definition of *Australian body corporate* in subsection (1); or
  - (d) Australian fund managers;
- if and only if the total value of shares in the body corporate in which persons other than persons mentioned in paragraphs (a) to (d) have relevant interests represents less than 40% of the total value of the issued share capital of the body corporate.
- (3) For the purposes of this Part, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share for the purposes of the *Corporations Act 2001* if paragraph 608(3)(a) of that Act were disregarded.
- (4) Subject to subsection (5), the directors of CSL must form the opinion for the purposes of the definition of *Australian body corporate* in subsection (1) that a particular body corporate is not effectively controlled by persons who are Australian individuals, Australian government bodies, Australian bodies corporate or Australian fund managers if any of the circumstances set out in subsection (6) apply in relation to the body corporate.
- (5) The directors of CSL may form the opinion for the purposes of the definition of *Australian body corporate* in subsection (1) that a particular body corporate is effectively controlled by persons who are Australian individuals, Australian government bodies, Australian bodies corporate or Australian fund managers if, in spite of any of the circumstances set out in subsection (6), the directors are satisfied, on reasonable grounds, that the body corporate is effectively controlled by persons who are Australian individuals, Australian government bodies, Australian bodies corporate or Australian fund managers.
- (6) The circumstances are as follows:
  - (a) a single foreign person has relevant interests in at least 15% of the voting shares of the body corporate;
  - (b) foreign persons, either alone or together with associates of the foreign persons, are in a position to exercise (whether directly or indirectly) control over a significant proportion of the operations of the body corporate;
  - (c) foreign persons, either alone or together with associates of the foreign persons, are in a position (whether directly or



- indirectly) to veto any significant action taken by the board of directors of the body corporate;
- (d) foreign persons, either alone or together with associates of the foreign persons, are in a position (whether directly or indirectly) to appoint, to secure the appointment or veto the appointment of at least half of the board of directors of the body corporate;
  - (e) foreign persons, either alone or together with associates of the foreign persons, are in a position to exercise in any manner (whether directly or indirectly), direction or restraint over any substantial issue affecting the management or affairs of the body corporate;
  - (f) the body corporate or at least 50% of its directors:
    - (i) act or are accustomed to act; or
    - (ii) under a contract, or an arrangement or understanding (whether formal or informal), are intended or expected to act;in accordance with the directions, instructions or wishes of foreign persons, either alone or together with associates of the foreign persons, either generally or in relation to the body corporate's dealings with CSL or with shares in CSL.
- (7) An employee of a body corporate is not to be regarded for the purposes of subsection (6) as being in a position to:
- (a) exercise control over a significant proportion of the operations of the body corporate; or
  - (b) exercise direction or restraint over any substantial issue affecting the management or affairs of the body corporate;
- purely because he or she is an employee of the body corporate.
- (8) For the purposes of this Part, the question whether a person who is not an Australian citizen is ordinarily resident in Australia at a particular time is to be determined in the same manner as that question is determined under the *Foreign Acquisitions and Takeovers Act 1975*.
- (9) For the purposes of Divisions 3 and 4, a reference to CSL or to a CSL subsidiary includes a reference to an administering body in relation to CSL or the CSL subsidiary.

## **Division 2—Requirements regarding CSL's articles of association**

### **19C CSL's articles of association to include certain provisions**

- (1) The articles of association of CSL must, on and after the sale day, include the following provisions:
  - (a) a provision imposing restrictions on the counting of votes in respect of the appointment, replacement and removal of directors of CSL so as to prevent the votes attaching to all significant foreign shareholdings being counted in respect of the appointment, replacement or removal, of more than one-third of the directors of CSL who hold office at any particular time; and
  - (b) a provision requiring the directors of CSL, for the purposes of enforcing the articles giving effect to paragraph (a), to take reasonable steps to find out whether there are significant foreign shareholdings; and
  - (c) a provision conferring the following powers on the directors of CSL to enable the directors to enforce the articles giving effect to paragraph (a):
    - (i) the power to remove or limit the right of a person to exercise voting rights attached to voting shares in CSL in respect of the appointment, replacement or removal of a director of CSL; and
    - (ii) the power to remove a director of CSL; and
  - (d) a provision requiring that the head office of CSL always be located in Australia; and
  - (e) a provision requiring that the principal facilities used by CSL and any CSL subsidiaries to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia always be located in Australia; and
  - (f) a provision requiring that, at all times, at least two-thirds of the directors of CSL be Australian citizens; and
  - (g) a provision requiring that the presiding director (however described) at a meeting of the board of directors of CSL be an Australian citizen; and
  - (h) a provision prohibiting CSL from taking any action at any time to become incorporated outside Australia.

- (2) In this section:

*significant foreign shareholding* means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least 5% of the voting shares in CSL.

**19D Inconsistent alteration to CSL's articles of association to have no effect**

- (1) A special resolution of CSL that would, apart from this subsection, have the effect of altering CSL's articles of association so that the articles would not comply with section 19C has no effect.
- (2) A special resolution or resolution of CSL that, apart from this subsection:
- (a) would, if acted on, result in a contravention of the mandatory articles; or
  - (b) would ratify an act or omission that contravenes the mandatory articles;
- has no effect.
- (3) In this section:

*resolution* has the same meaning as in the *Corporations Act 2001*.

*special resolution* has the same meaning as in the *Corporations Act 2001*.

**19E CSL to maintain a register of foreign-held voting shares**

- (1) CSL must on and after the sale day maintain a register of foreign-held voting shares.
- (2) If the Minister gives CSL a written request that CSL give to him or her the register or a copy of the register at such reasonable time and reasonable place as the Minister specifies, CSL must give the Minister the register or a copy of the register, as the case requires, in accordance with the request.

Section 19F

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**19F Injunctions in relation to contraventions of a mandatory article or section 19E**

- (1) Subsection (2) applies if CSL or any other person has engaged, is engaging or is proposing to engage in conduct constituting or that would constitute:
    - (a) a contravention of a mandatory article or section 19E; or
    - (b) attempting to contravene a mandatory article or section 19E; or
    - or
    - (c) aiding, abetting, counselling or procuring a person to contravene a mandatory article or section 19E; or
    - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a mandatory article or section 19E; or
    - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a mandatory article or section 19E; or
    - (f) conspiring with others to contravene a mandatory article or section 19E.
  - (2) The Court may, on the application of the Minister, grant an injunction, on such terms as the Court thinks appropriate, restraining CSL or the other person from engaging in the conduct and if the Court thinks it appropriate to do so, requiring CSL or the other person to do anything.
  - (3) Subsection (4) applies if CSL or any other person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing and that refusal or failure constitutes or would constitute:
    - (a) a contravention of a mandatory article or section 19E; or
    - (b) attempting to contravene a mandatory article or section 19E; or
    - or
    - (c) aiding, abetting, counselling or procuring a person to contravene a mandatory article or section 19E; or
    - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene a mandatory article or section 19E; or
    - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a mandatory article or section 19E; or
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- (f) conspiring with others to contravene a mandatory article or section 19E.
- (4) The Court may, on the application of the Minister, grant an injunction on such terms as the Court thinks appropriate, requiring CSL or the other person to do anything.
- (5) The Court may discharge or vary an injunction under this section.

### **19G Consent injunctions**

On an application for an injunction under subsection 19F(2) or (4), the Court may, if the Court thinks it appropriate, grant an injunction by consent of all parties to the proceeding, whether or not the Court is satisfied that that subsection applies.

### **19H Interim injunctions**

If the Court thinks it appropriate to do so, the Court may grant an interim injunction pending determination of an application under subsection 19F(2) or (4).

### **19J Factors relevant to the grant of a restraining injunction**

The power of the Court to grant an injunction under subsection 19F(2) restraining CSL or any other person from engaging in conduct may be exercised:

- (a) whether or not it appears to the Court that CSL or the other person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not CSL or the other person has previously engaged in conduct of that kind; and
- (c) whether or not there is an imminent danger of substantial damage to any person if CSL or the other person engages, or continues to engage, in conduct of that kind.

### **19K Factors relevant to the grant of a mandatory injunction**

The power of the Court to require CSL or another person to do anything under subsection 19F(4) may be exercised:

Section 19L

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- (a) whether or not it appears to the Court that CSL or the other person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not CSL or the other person has previously refused or failed to do that act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to any person if CSL or the other person refuses or fails to do that act or thing.

**19L Undertaking as to damages not required**

If the Minister applies to the Court for the grant of an injunction under section 19F, the Court must not require the Minister, as a condition of granting an interim injunction, to give an undertaking as to damages.

**19M Other orders**

If the Court has power under section 19F to grant an injunction restraining CSL or another person from engaging in particular conduct, or requiring CSL or another person to do anything, the Court may, as well as or instead of granting an injunction, make such other orders as it thinks appropriate against CSL or the other person or a person who was involved in the conduct.

## **Division 3—Prohibition on disposal etc. of the Broadmeadows facility**

### **19N Declaration of Broadmeadows land**

The Minister may, by notice in the *Gazette*, declare the whole, or any specified part of, the land located at Broadmeadows in the State of Victoria that has been transferred to CSL or a wholly-owned subsidiary of CSL by the Commonwealth on or before the sale day to be the Broadmeadows land for the purposes of this Division.

### **19P Prohibition on disposal etc. of Broadmeadows facility**

- (1) Neither CSL nor a wholly-owned subsidiary may:
  - (a) dispose of the whole of the Broadmeadows facility; or
  - (b) grant an interest (including a contingent interest) in the Broadmeadows facility; or
  - (c) grant a security interest in the Broadmeadows facility or any part of that facility;without the written approval of the Minister.
- (2) Subsection (1) does not prevent CSL disposing of the facility, or granting an interest (including a contingent interest) in the facility, to a wholly-owned subsidiary of CSL.
- (3) Subsection (1) does not prevent a wholly-owned subsidiary of CSL disposing of the facility, or granting an interest (including a contingent interest) in the facility, to CSL or another wholly-owned subsidiary of CSL.
- (4) If a wholly-owned subsidiary of CSL owns or has an interest (including a contingent interest) in the Broadmeadows facility, neither CSL nor a wholly-owned subsidiary of CSL that directly or indirectly owns the first-mentioned subsidiary may:
  - (a) dispose of any shares in the first-mentioned subsidiary or any other wholly-owned subsidiary of CSL that directly or indirectly owns the first-mentioned subsidiary; or

Section 19P

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- (b) do anything that would cause the first-mentioned subsidiary not to be a wholly-owned subsidiary of CSL;  
without the written approval of the Minister.
- (5) The Minister's approval under subsection (1) or (4) may be subject to conditions.
- (6) An act or transaction after the day this section commences which involves a contravention of subsection (1) or (4) is ineffective to the extent that it involves the contravention of that subsection.
- (7) In this section:

***Broadmeadows facility*** means:

- (a) the Broadmeadows land declared under section 19N; and
- (b) the buildings and fixtures on that land on the day the land was transferred to CSL or a wholly-owned subsidiary of CSL by the Commonwealth; and
- (c) buildings and fixtures that are constructed on or affixed to the land after that day.

***security interest*** means an interest in or a power over property which secures payment of a debt or any other obligation.



## **Division 4—Injunctions to ensure performance of plasma products contracts**

### **19Q Injunction to ensure performance of plasma products contracts**

- (1) This section applies if the Commonwealth and CSL have entered into a contract (the *contract*), whether before or after the commencement of this section, in relation to the production by CSL or a CSL subsidiary of products derived from human plasma collected from blood or plasma donated by individuals in Australia.
- (2) Subsection (1) applies to the first contract of the kind described in that subsection and to any such contract subsequently entered into by the Commonwealth and CSL.
- (3) If CSL has engaged, is engaging, or is proposing to engage in conduct that constitutes, or would constitute, a breach of a provision of the contract, the Court must, on the application of the Minister, grant an injunction on such terms as the Court thinks appropriate:
  - (a) restraining CSL from engaging in the conduct; and
  - (b) if the Court thinks it appropriate, requiring CSL to do anything to ensure that the contract is performed by CSL.
- (4) If CSL has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do anything that CSL is required by the contract to do, the Court must, on the application of the Minister, grant an injunction, on such terms as the Court thinks appropriate, requiring CSL to do that thing.
- (5) On an application for an injunction under subsection (3), the Court may, if the Court thinks a CSL subsidiary has caused or contributed to CSL having engaged, engaging or proposing to engage, in conduct that constitutes a breach of a provision of the contract, make such orders (including granting an injunction) as it thinks appropriate against the CSL subsidiary.
- (6) On an application for an injunction under subsection (4), the Court may, if the Court thinks a CSL subsidiary has caused or contributed to CSL having refused or failed, refusing or failing, or proposing to refuse or fail, to do anything that CSL is required by

Section 19R

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the contract to do, make such orders (including granting an injunction) as it thinks appropriate against the CSL subsidiary.

- (7) The Court may discharge or vary an injunction under this section.

**19R Consent injunctions**

On an application for an injunction under subsection 19Q(3) or (4), the Court may, if the Court thinks it appropriate, grant an injunction by consent of all parties to the proceeding, whether or not the Court is satisfied that the subsection applies.

**19S Interim injunctions**

If the Court thinks it appropriate to do so, the Court may grant an interim injunction pending determination of an application under subsection 19Q(3) or (4).

**19T Factors relevant to the grant of a restraining injunction**

- (1) The power of the Court to grant an injunction under subsection 19Q(3) restraining CSL from engaging in conduct must be exercised:
- (a) whether or not it appears to the Court that CSL intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not CSL has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if CSL engages, or continues to engage, in conduct of that kind; and
  - (d) whether or not the Commonwealth has or may have any other remedy available to it in relation to the conduct.
- (2) The power of the Court to grant an injunction under subsection 19Q(5) or (6) restraining a CSL subsidiary from engaging in conduct may be exercised:
- (a) whether or not it appears to the Court that the subsidiary intends to engage again, or to continue to engage, in conduct of that kind; and

- (b) whether or not it appears to the Court that CSL intends to engage or to continue to engage in conduct that constitutes a breach of a provision of the contract; and
- (c) whether or not the subsidiary has previously engaged in conduct of that kind; and
- (d) whether or not there is an imminent danger of substantial damage to any person if the subsidiary engages, or continues to engage, in conduct of that kind; and
- (e) whether or not the Commonwealth has or may have any other remedy available to it in relation to the conduct.

### **19U Factors relevant to the grant of a mandatory injunction**

- (1) The power of the Court to require CSL to do a thing under subsection 19Q(4) must be exercised:
  - (a) whether or not it appears to the Court that CSL intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not CSL has previously refused or failed to do that thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if CSL refuses or fails to do that thing; and
  - (d) whether or not the Commonwealth or another person has or may have any other remedy available to it in relation to the refusal or failure to do that thing.
- (2) The power of the Court to require a CSL subsidiary to do a thing under subsection 19Q(5) or (6) may be exercised:
  - (a) whether or not it appears to the Court that the subsidiary intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not it appears to the Court that CSL intends to refuse or fail again, or to continue to refuse or fail, to do anything that CSL is required by the contract to do; and
  - (c) whether or not the subsidiary has previously refused or failed to do that thing; and
  - (d) whether or not there is an imminent danger of substantial damage to any person if the subsidiary refuses or fails to do that thing; and

Section 19V

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- (e) whether or not the Commonwealth or another person has or may have any other remedy available to it in relation to the refusal or failure to do that thing.

**19V Undertakings not required**

If the Minister applies to the Court for the grant of an injunction under section 19Q, the Court must not require the Minister, as a condition of granting an interim injunction, to give any undertakings, including any undertakings as to damages.

**19W Other orders**

- (1) If the Court has power under subsection 19Q(3) to grant an injunction restraining CSL from engaging in particular conduct, the Court may, as well as granting an injunction, make such orders as it thinks appropriate against CSL or any other CSL body involved in the conduct.
- (2) If the Court has power under subsection 19Q(4) to grant an injunction requiring CSL to do a thing, the Court may, as well as granting an injunction, make such orders as it thinks appropriate against CSL or any other CSL body involved in the refusal or failure of CSL to do the thing.

## **Division 5—Miscellaneous**

### **19X Delegation by Minister**

- (1) The Minister may delegate his or her powers and functions under this Part to an SES employee or acting SES employee in the Department.

### **19Y Jurisdiction of courts**

The Federal Court of Australia has jurisdiction with respect to matters arising under this Part and that jurisdiction is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

### **19Z This Part to have effect despite the Corporations Act**

This Part has effect despite any provision of the *Corporations Act 2001*.

### **19ZA Remedies under this Part to be additional remedies**

The remedies conferred by this Part are in addition to any other remedies the Commonwealth would have apart from this Part.

## Part 5—Staff matters

### 26 Employment of staff members continues after transition

Subject to this Part, each staff member continues, at and after the transition to be employed by CSL on the terms and conditions on which he or she was employed by CSL immediately before the transition.

### 27 Act not to affect certain matters relating to staff members

- (1) This section has effect for the purposes of the application, at any time at or after the transition, of a law, determination or industrial instrument in relation to the employment of a staff member.
- (2) Neither his or her contract of employment, nor his or her period of employment, shall be taken to have been broken by the operation of this Act.
- (3) Without limiting section 26 or subsection (2) of this section, this Act does not affect any accrued rights that the staff member had immediately before the transition in relation to any kind of leave.
- (4) Where:
  - (a) if the staff member had, immediately before the transition, ceased to be employed by CSL, it would have been necessary to take into account a period during which the staff member was employed by CSL or any other person to determine:
    - (i) an amount payable to the staff member; or
    - (ii) a benefit to which the staff member would have been entitled;because of his or her so ceasing; and
  - (b) but for this subsection, some or all of that period would not have to be taken into account as a period during which the staff member was employed by CSL;CSL shall treat the whole of the first-mentioned period as a period during which the staff member was employed by it.

- (5) In this section:

***industrial instrument*** means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement;
- (f) an AWA.

## **28 Effect of sections 26 and 27**

Sections 26 and 27 are enacted only for the avoidance of doubt and, in particular, do not limit subsection 65(5) or 87(2) of the *Companies Act 1981*.

## **29 Variation of terms and conditions of employment**

- (1) It is a term of each staff member's employment after the transition that the terms and conditions of that employment may be varied to the extent to which, and in the manner in which, the terms and conditions of his or her employment could, immediately before the transition, be varied under this Act.
- (2) Nothing in this Part prevents the terms and conditions of a staff member's employment after the transition from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, determination or industrial instrument.
- (3) In this section:

***industrial instrument*** means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement;

Section 29

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(f) an AWA.

*terms and conditions* includes a term or condition existing because of subsection (1).

*vary*, in relation to terms and conditions, includes vary by way of:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.



## **Part 6—Taxation matters**

### **31 Interpretation**

In this Part:

*exempt matter* means:

- (a) a transfer of assets or liabilities under section 31A; or
- (b) an issue of shares under subsection 9(3); or
- (c) the reservation of name made by subsection 10(5); or
- (d) the change of name made by subsection 11(1); or
- (e) CSL's registration as a company by force of this Act; or
- (f) the operation of the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990*; or
- (g) giving effect to a matter referred to in another paragraph of this definition or giving effect to the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990*.

*tax* includes:

- (d) stamp duty; and
- (e) any other tax, fee, duty, levy or charge;

but does not include income tax imposed as such by a law of the Commonwealth.

### **32 Exemptions relating to exempt matters**

Tax under a law of the Commonwealth or a State or Territory is not payable in relation to:

- (a) an exempt matter; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

### **33 Minister may certify in relation to exemptions**

- (1) The Minister may, by signed writing, certify that:
  - (a) a specified matter or thing is an exempt matter; or

Section 34

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- (b) a specified thing was done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a specified exempt matter.
- (2) For all purposes and in all proceedings, a certificate under subsection (1) is conclusive evidence of the matters certified unless the contrary is established.

**34 CSL taken to have had share capital for purposes of Income Tax Assessment Act**

For the purposes of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*, CSL shall be taken to have had, at all times before it complied with subsection 9(3) of this Act, a share capital all the issued shares in which were, at all such times, beneficially owned by the Commonwealth.

**35 Treatment of acquisitions of transferring assets for purposes of Income Tax Assessment Act**

For the purposes of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* after the commencement of this Part:

- (a) CSL is to be taken to have acquired a transferring asset on the day on which that asset was acquired by the Commonwealth; and
- (b) CSL is to be taken to have paid or given, in relation to its acquisition of a transferring asset, the consideration paid or given by the Commonwealth in relation to the acquisition of that asset by the Commonwealth and to have done so when the Commonwealth paid or gave the consideration; and
- (c) CSL is to be taken to have incurred, in relation to its acquisition of a transferring asset, the liability to pay or give consideration incurred by the Commonwealth in relation to the acquisition of that asset by the Commonwealth and to have done so when the Commonwealth incurred the liability; and
- (d) CSL is to be taken to have incurred, in relation to a transferring asset, costs and expenditure of the kinds referred to in subsection 110-25(3), (5) or (6) of the *Income Tax Assessment Act 1997* incurred by the Commonwealth in

relation to the asset and to have done so when the Commonwealth incurred the costs or expenditure.

## **Part 7—Miscellaneous**

### **36 CSL not public authority etc.**

CSL, as it exists after the transition, shall be taken for the purposes of a law of the Commonwealth or a State or Territory:

- (a) not to have been incorporated or established for a public purpose or for a purpose of the Commonwealth; and
- (b) not to be a public authority or an instrumentality or agency of the Crown;

except so far as express provision is made by a law of the Commonwealth, State or Territory, as the case may be.

### **37 Judicial notice of CSL's seal**

- (1) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of CSL appearing on a document and shall presume that it was duly affixed.
- (2) Subsection (1) applies only in relation to an imprint that was affixed, or appears to have been affixed, before the transition.

### **38 Compensation for acquisition of property**

- (1) Where, but for this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, there is payable to the person by CSL such reasonable amount of compensation as is agreed on between the person and CSL or, failing agreement, as is determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered or other remedy given in proceedings that are instituted otherwise than under this section shall be taken into account in assessing compensation payable in proceedings that are instituted under this section and that arise out of the same event or transaction.

(3) In this section:

*acquisition of property* and *just terms* have the same respective meanings as in paragraph 51(31) of the Constitution.

#### **41 Delegations**

The Minister may by signed writing delegate to an officer of the Department all or any of the powers and functions of the Minister under this Act.

#### **42 Regulations**

- (1) The Governor-General may make regulations not inconsistent with this Act, prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.



**Table of Acts****Notes to the *Commonwealth Serum Laboratories Act 1961*****Note 1**

The *Commonwealth Serum Laboratories Act 1961* as shown in this compilation comprises Act No. 38, 1961 amended as indicated in the Tables below.

The *Commonwealth Serum Laboratories Act 1961* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendments are incorporated in this compilation.

The *Commonwealth Serum Laboratories Act 1961* is affected by sections 42 and 46 of the *CSL Sale Act 1993*.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, see Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 22 June 1998 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commonwealth Serum Laboratories Act 1961</i>	38, 1961	2 June 1961	2 Nov 1961 (see <i>Gazette</i> 1961, p. 3729)	
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—
<i>Commonwealth Serum Laboratories Act 1970</i>	42, 1970	24 June 1970	24 June 1970	—
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<b>as amended by</b>				
<i>Statute Law Revision Act 1974</i>	20, 1974	25 July 1974	31 Dec 1973	—
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commonwealth Serum Laboratories Amendment Act 1980</i>	7, 1980	24 Mar 1980	1 July 1980	S. 30
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (a)	—
<i>Health Legislation Amendment Act (No. 2) 1985</i>	167, 1985	16 Dec 1985	Part I (ss. 1, 2), Part II (ss. 3–24), ss. 25, 26(2), 27, 37, 38, 42, 43, 55, 57, 65–70 and 72–74: Royal Assent S. 28: 1 Feb 1984 S. 30: 5 Sept 1985 Ss. 58–64: 1 May 1985 Remainder: 22 Feb 1986 (see <i>Gazette</i> 1986, No. S64)	S. 24
<i>Health Legislation Amendment Act (No. 2) 1986</i>	94, 1986	13 Oct 1986	Ss. 4(1), 6–8, 10, 12, 14(2) and 36: 1 Oct 1986; Ss. 5, 14(3), 17(1), 18, 19, 21, 23–28, 30, 32 and 35: 1 Nov 1986 Ss. 16, 31, 33, 38(2), (3) and (4): 1 Jan 1987 Ss. 4(2), 17(2), 20, 22 and 29: 1 Apr 1987 (see <i>Gazette</i> 1987, No. S57) Remainder: Royal Assent	—
<i>Community Services and Health Legislation Amendment Act (No. 2) 1988</i>	155, 1988	26 Dec 1988	S. 41(1): Royal Assent (b)	—
<i>Therapeutic Goods Act 1989</i>	21, 1990	17 Jan 1990	15 Feb 1991	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990</i>	77, 1990	22 Oct 1990	Ss. 6, 10, 13 and 17: 1 Apr 1991 (see <i>Gazette</i> 1991, No. S75) S. 9(2): (c) S. 11: 1 Apr 1991 S. 12: 22 Feb 1991 S. 16: 1 Apr 1991 Remainder: Royal Assent	Ss. 15, 16(5) and (6)
<i>CSL Sale Act 1993</i>	88, 1993	30 Nov 1993	Part 1 (ss. 1–4), ss. 7 and 47: Royal Assent Ss. 5 and 6: 22 Feb 1991 Remainder: 3 June 1994 (see <i>Gazette</i> 1994, No. S209)	Ss. 3 and 4
<i>Income Tax (Consequential Amendments) Act 1997</i>	39, 1997	17 Apr 1997	1 July 1997	—
<i>Tax Law Improvement Act (No. 1) 1998</i>	46, 1998	22 June 1998	S. 4: Royal Assent (d) Schedule 2 (items 530, 531): (d)	S. 4 [see Table A]
<i>Statute Stocktake Act 1999</i>	118, 1999	22 Sept 1999	22 Sept 1999	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 323, 324): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (e)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 5 (item 13): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (f)	—
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 131–145): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (g)	Ss. 4–14 [see Note 1]
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 217, 218): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (h)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (item 43) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11) [see Table A]
<i>Australian Citizenship (Transitionals and Consequentials) Act 2007</i>	21, 2007	15 Mar 2007	Schedules 1–3: 1 July 2007 (see s. 2(1) and F2007L01653) Remainder: Royal Assent	—
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	8, 2008	20 Mar 2008	Schedules 1–7: 28 Mar 2008 (see F2008L00959) Remainder: Royal Assent	—

**Act Notes**

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- (a) The *Commonwealth Serum Laboratories Act 1961* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (b) The *Commonwealth Serum Laboratories Act 1961* was amended by subsection 41(1) only of the *Community Services and Health Legislation Amendment Act (No. 2) 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) Subsection 2(2) of the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990* provides as follows:
- (2) Subsection 9(2) commences immediately after subsection 44B(3) of the Principal Act as amended by this Act is complied with.
- The date on which the Commonwealth Serum Laboratories Limited certified that the requirements of subsection 44B(3) had been complied with was 22 March 1991.
- (d) Subsections 2(1) and (2) of the *Tax Law Improvement Act (No. 1) 1998* provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.
- Schedule 1 commenced on Royal Assent.
- (e) The *Commonwealth Serum Laboratories Act 1961* was amended by Schedule 1 (items 323 and 324) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (f) The *Commonwealth Serum Laboratories Act 1961* was amended by Schedule 5 (item 13) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(b) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);
- (g) The *Commonwealth Serum Laboratories Act 1961* was amended by Schedule 3 (items 131–145) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (h) The *Commonwealth Serum Laboratories Act 1961* was amended by Schedule 1 (items 217 and 218) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:
 

**FSR commencement** means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
  - (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
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**Table of Amendments**

The amendment history of the *Commonwealth Serum Laboratories Act 1961* after renumbering by the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990* (No. 77, 1990) appears in the Table below. For repealed provisions up to and including Act No. 77, 1990 see the Repeal Table.

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Title .....	rs. No. 77, 1990
<b>Part 1</b>	
S. 3 .....	rep. No. 216, 1973 ad. No. 77, 1990 am. No. 88, 1993
S. 4 .....	ad. No. 77, 1990 rep. No. 88, 1993
S. 5 .....	ad. No. 77, 1990 am. No. 55, 2001
Ss. 6, 7 .....	ad. No. 77, 1990
<b>Part 2</b>	
Part 2 .....	ad. No. 77, 1990
S. 8 .....	ad. No. 77, 1990 am. No. 88, 1993; No. 55, 2001
Ss. 9–11 .....	ad. No. 77, 1990
<b>Part 3</b>	
Part 3 .....	ad. No. 77, 1990
Ss. 12–15 .....	ad. No. 77, 1990
S. 16 .....	ad. No. 77, 1990 am. No. 88, 1993 rs. No. 55, 2001
Ss. 17–18 .....	ad. No. 77, 1990 rep. No. 55, 2001
S. 19 .....	ad. No. 77, 1990 am. No. 55, 2001
<b>Part 3A</b>	
Part 3A .....	ad. No. 88, 1993
<b>Division 1</b>	
S. 19A .....	ad. No. 88, 1993
S. 19B .....	ad. No. 88, 1993 am. No. 156, 1999; Nos. 55 and 123, 2001; No. 21, 2007
<b>Division 2</b>	
S. 19C .....	ad. No. 88, 1993
S. 19D .....	ad. No. 88, 1993 am. No. 55, 2001
Ss. 19E–19H .....	ad. No. 88, 1993

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Ss. 19J–19M .....	ad. No. 88, 1993
<b>Division 3</b>	
S. 19N .....	ad. No. 88, 1993
S. 19P .....	ad. No. 88, 1993
<b>Division 4</b>	
Ss. 19Q–19W .....	ad. No. 88, 1993
<b>Division 5</b>	
S. 19X .....	ad. No. 88, 1993 am. No. 146, 1999
S. 19Y .....	ad. No. 88, 1993
Heading to s. 19Z .....	am. No. 55, 2001
S. 19Z .....	ad. No. 88, 1993 am. No. 55, 2001
S. 19ZA .....	ad. No. 88, 1993
Part 4 .....	ad. No. 77, 1990 rep. No. 88, 1993
Ss. 20–25 .....	ad. No. 77, 1990 rep. No. 88, 1993
<b>Part 5</b>	
Part 5 .....	ad. No. 77, 1990
S. 26 .....	ad. No. 77, 1990
S. 27 .....	ad. No. 77, 1990 am. SLI 2006 No. 50; No. 8, 2008
S. 28 .....	ad. No. 77, 1990
S. 29 .....	ad. No. 77, 1990 am. SLI 2006 No. 50; No. 8, 2008
S. 30 .....	ad. No. 77, 1990 rep. No. 88, 1993
<b>Part 6</b>	
Part 6 .....	ad. No. 77, 1990
S. 31 .....	ad. No. 77, 1990 am. No. 118, 1999; No. 101, 2006
Ss. 32–34 .....	ad. No. 77, 1990
S. 35 .....	ad. No. 77, 1990 am. No. 46, 1998
<b>Part 7</b>	
Part 7 .....	ad. No. 77, 1990
Ss. 36–38 .....	ad. No. 77, 1990
Ss. 39, 40 .....	ad. No. 77, 1990 rep. No. 88, 1993
S. 41 .....	ad. No. 77, 1990
S. 42 .....	ad. No. 77, 1990 am. No. 88, 1993

**Repeal Table**

Certain provisions of the *Commonwealth Serum Laboratories Act 1961*, as amended, were repealed either prior to renumbering by the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990* (No. 77, 1990) or by that Act. The amendment history of the repealed provisions appears in the Table below.

**Repeal Table**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 4.....	rs. No. 7, 1980 am. No. 167, 1985; No. 94, 1986; No. 21, 1990 rep. No. 77, 1990
S. 5.....	am. No. 36, 1978; No. 7, 1980 rep. No. 77, 1990
S. 6.....	am. No. 7, 1980; No. 167, 1985; No. 21, 1990 rep. No. 77, 1990
Part II ..... (ss. 7, 8, 10, 11, 11A, 12–21, 23, 23A–23C, 24–27, 31, 31A, 32–34, 34A, 34B, 35–44)	rep. No. 77, 1990
S. 7.....	am. No. 77, 1990 rep. No. 77, 1990
S. 8.....	am. No. 216, 1973; No. 7, 1980; No. 167, 1985 rep. No. 77, 1990
S. 9.....	rep. No. 7, 1980
S. 10.....	rep. No. 77, 1990
S. 11.....	am. No. 167, 1985 rep. No. 77, 1990
S. 11A .....	ad. No. 94, 1986 rep. No. 77, 1990
S. 12.....	rs. No. 7, 1980 rep. No. 77, 1990
Ss. 13, 14 .....	rep. No. 77, 1990
Ss. 15, 16 .....	am. No. 7, 1980; No. 167, 1985 rep. No. 77, 1990
S. 17.....	rep. No. 77, 1990
S. 18.....	am. No. 167, 1985 rep. No. 77, 1990
Div. 2 (ss. 19–21).....	rep. No. 77, 1990
S. 19.....	am. No. 42, 1970; No. 216, 1973 rs. No. 7, 1980 am. No. 167, 1985 rep. No. 77, 1990
S. 20.....	am. No. 93, 1966; No. 7, 1980; No. 167, 1985 rep. No. 77, 1990

**Repeal Table**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 21 .....	rs. No. 7, 1980; No. 167, 1985 rep. No. 77, 1990
S. 22 .....	rep. No. 7, 1980
Heading to Div. 3 of Part II .....	am. No. 167, 1985 rep. No. 77, 1990
Div. 3 (ss. 23, 23A–23C) .....	rep. No. 77, 1990
S. 23 .....	am. No. 7, 1980; No. 167, 1985 rep. No. 77, 1990
S. 23A .....	ad. No. 7, 1980 am. No. 167, 1985 rep. No. 77, 1990
S. 23B .....	ad. No. 7, 1980 rep. No. 167, 1985
S. 23C .....	ad. No. 7, 1980 am. No. 167, 1985 rep. No. 77, 1990
Div. 4 (ss. 24–27) .....	rep. No. 77, 1990
S. 24 .....	rep. No. 77, 1990
S. 25 .....	rs. No. 7, 1980 rep. No. 77, 1990
S. 26 .....	am. No. 93, 1966; No. 216, 1973; No. 7, 1980; Nos. 65 and 167, 1985 rep. No. 77, 1990
S. 27 .....	am. No. 7, 1980; No. 167, 1985 rep. No. 77, 1990
Ss. 28, 29 .....	rep. No. 7, 1980
S. 30 .....	rep. No. 216, 1973 (as am. by No. 20, 1974)
Div. 5 .....	rep. No. 77, 1990
(ss. 31, 31A, 32–34, 34A, 34B, 35–39, 42)	
S. 31 .....	am. No. 7, 1980 rep. No. 77, 1990
S. 31A .....	ad. No. 77, 1990 rep. No. 77, 1990
S. 32 .....	am. No. 36, 1978; No. 7, 1980; No. 77, 1990 rep. No. 77, 1990
S. 33 .....	am. No. 36, 1978; No. 7, 1980 rep. No. 77, 1990
S. 34 .....	am. No. 36, 1978 rs. No. 7, 1980 rep. No. 77, 1990 am. No. 39, 1997
Ss. 34A, 34B .....	ad. No. 7, 1980 rep. No. 77, 1990
S. 35 .....	am. No. 7, 1980 rs. No. 167, 1985 rep. No. 77, 1990



**Repeal Table**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 36.....	am. No. 7, 1980; No. 167, 1985 rep. No. 77, 1990
S. 37.....	rs. No. 7, 1980 rep. No. 77, 1990
S. 38.....	rs. No. 7, 1980 am. No. 167, 1985 rep. No. 77, 1990
S. 39.....	am. No. 36, 1978 rs. No. 7, 1980 rep. No. 77, 1990
Ss. 40, 41 .....	rs. No. 7, 1980 rep. No. 167, 1985
S. 42.....	am. No. 216, 1973; No. 36, 1978; No. 7, 1980 rep. No. 77, 1990
Div. 6 (ss. 43, 44).....	rep. No. 77, 1990
S. 43.....	rep. No. 77, 1990
S. 44 .....	am. No. 36, 1978; No. 7, 1980 rs. No. 167, 1985 rep. No. 77, 1990
Part III (ss. 44A, 45) .....	rep. No. 77, 1990
S. 44A .....	ad. No. 7, 1980 am. No. 155, 1988 rep. No. 77, 1990
S. 45.....	rep. No. 77, 1990

## **Table A**

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### **Table A**

#### **Application, saving or transitional provisions**

*Tax Law Improvement Act (No. 1) 1998* (No. 46, 1998)

#### **4 Application of amendments**

An amendment made by an item in a Schedule (except an item in Schedule 1 or in Part 1 of any of Schedules 2 to 8) applies to assessments for the 1998-99 income year and later income years, unless otherwise indicated in the Schedule in which the item appears.

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*Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*  
(No. 101, 2006)

#### **Schedule 6**

#### **5 Application of Schedule 5 amendments**

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

#### **6 Object**

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

## 7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

## Table A

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Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

### **8 Saving of provisions about effect of assessments**

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

### **9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty**

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
  - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
  - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

**Table A**

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**10 Repeals disregarded for the purposes of dependent provisions**

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

**11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901***

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

## Renumbering Table

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### Renumbering Table

Table showing Parts, Divisions and sections of the *Commonwealth Serum Laboratories Act 1961* after renumbering by the *Commonwealth Serum Laboratories (Conversion into Public Company) Act 1990* (No. 77, 1990).

NOTE—This Table does not form part of the *Commonwealth Serum Laboratories Act 1961*, and is provided for convenience of reference only.

Old Number	New Number	Old Number	New Number
Part I	Part 1	Section	Section
Section	Section	47	22
1	1	48	23
2	2	49	24
3	3	50	25
3A	4	Part IV	Part 5
3B	5	Section	Section
3C	6	51	26
3D	7	52	27
Part IIA	Part 2	53	28
Section	Section	54	29
44A	8	55	30
44B	9	Part V	Part 6
44C	10	Section	Section
44D	11	56	31
Part IIB	Part 3	57	32
Section	Section	58	33
44E	12	59	34
44F	13	60	35
44G	14	Part VI	Part 7
44H	15	Section	Section
44J	16	61	36
44K	17	62	37
44L	18	63	38
44M	19	64	39
Part III	Part 4	65	40
Section	Section	66	41
45	20	67	42
46	21		