



Government Business Enterprises (Miscellaneous Reforms) Act 1988

No. 123 of 1988

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Government Business Enterprises (Miscellaneous Reforms) Act 1988

No. 123 of 1988

**An Act to make certain reforms in relation to certain
government business enterprises and authorities**

[Assented to 14 December 1988]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Government Business Enterprises (Miscellaneous Reforms) Act 1988*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part II commences on 26 January 1989.

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(3) Part VI commences on a day to be fixed by Proclamation.

(4) Part VII commences on 14 November 1988.

**PART II—AMENDMENTS OF THE AUSTRALIAN SHIPPING
COMMISSION ACT 1956**

Principal Act

3. In this Part, “Principal Act” means the *Australian Shipping Commission Act 1956*¹.

Constitution of Commission

4. Section 8 of the Principal Act is amended:

(a) by omitting subsections (3) and (4);

(b) by inserting in subsection (5) “non-executive” before “Commissioners”.

Period of appointment of non-executive Commissioners

5. Section 8A of the Principal Act is amended by inserting “non-executive” before “Commissioner”.

Leave of non-executive Commissioners

6. Section 10 of the Principal Act is amended by omitting subsection (1).

Remuneration and allowances of non-executive Commissioners

7. Section 11 of the Principal Act is amended by inserting in subsections (1) and (2) “non-executive” before “Commissioners”.

Termination of appointment of non-executive Commissioners

8. Section 12 of the Principal Act is amended:

(a) by inserting in subsection (1) and paragraphs (2) (a) and (d) “non-executive” before “Commissioner”;

(b) by omitting paragraph (2) (b).

Resignation of non-executive Commissioners

9. Section 13A of the Principal Act is amended by inserting “non-executive” before “Commissioner”.

10. After Division 2 of Part II of the Principal Act the following Division is inserted:

“Division 2A—Managing Director

Managing Director

“20A. There shall be a Managing Director of the Commission.

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Managing Director to be chief executive officer

“20B. The Managing Director shall be the chief executive officer of the Commission.

Appointment

“20C. (1) The Managing Director shall be appointed by the Minister after the Minister has received a recommendation from the Commission.

“(2) The Minister shall not appoint a non-executive Commissioner as Managing Director.

“(3) The appointment of a person as Managing Director is not invalid because of a defect or irregularity in relation to the appointment.

Holding of office during Commission’s pleasure etc.

“20D. The Managing Director:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office during the Commission’s pleasure.

Managing Director holds office on full time basis

“20E. The Managing Director holds office on a full time basis.

Terms and conditions of appointment not provided for by Act

“20F. The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Commission.

Disclosure of interests

“20G. The Managing Director shall give written notice to the Chairman of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.

Acting Managing Director

“20H. (1) The Commission may appoint a Commissioner or another person to act as Managing Director:

- (a) during a vacancy in the office of Managing Director; or
- (b) during any period, or during all periods, when the Managing Director is absent from duty or Australia or is, for any other reason, unable to perform the duties of the office.

“(2) Anything done by or in relation to a person purporting to act as Managing Director is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in relation to the appointment;

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- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Exclusion of Managing Director from certain deliberations

“20J. (1) The Managing Director shall not be present during any deliberation of the Commission, or take part in any decision of the Commission, in relation to:

- (a) the appointment of a person as Managing Director;
- (b) the determination or application of any terms or conditions on which the Managing Director holds office; or
- (c) the termination of the appointment of the Managing Director.

“(2) A person appointed to act as Managing Director shall not be present during any deliberation of the Commission, or take part in any decision of the Commission, in relation to:

- (a) the appointment of a person to act as Managing Director;
- (b) the determination or application of any terms or conditions on which a person appointed to act as Managing Director holds office; or
- (c) the termination of the appointment of the person.”.

Repeal of section 23

11. Section 23 of the Principal Act is repealed.

12. After section 35 of the Principal Act the following section is inserted:

Information relating to remuneration of Managing Director

“35A. (1) The financial statements of the Commission referred to in subsection 35 (3) shall comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation.

“(2) For the purposes of subsection (1):

- (a) the Commission shall be taken to be a listed corporation; and
- (b) the Managing Director shall be taken to be an executive officer of the Commission.

“(3) Expressions used in this section that are also used in the *Companies Act 1981* have the same respective meanings as they have in that Act.”.

**PART III—AMENDMENTS OF THE COMMONWEALTH BANKS
ACT 1959**

Principal Act

13. In this Part, “Principal Act” means the *Commonwealth Banks Act 1959*².

Membership of Board

14. Section 14 of the Principal Act is amended by inserting in subsections (5) and (6) “appointed under paragraph (1) (d)” after “Board”.

15. Sections 25 and 26 of the Principal Act are repealed and the following sections are substituted:

Appointment of Managing Director and Deputy Managing Director

“25. (1) The Managing Director shall be appointed by the Treasurer after the Treasurer has received a recommendation from the Board.

“(2) The Deputy Managing Director shall be appointed by the Treasurer after the Treasurer has received a recommendation from the Board.

“(3) The Treasurer shall not appoint a member of the Board (other than the holder of a statutory office) as Managing Director or Deputy Managing Director.

“(4) The appointment of a person as Managing Director or Deputy Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

Holding of office during Board’s pleasure etc.

“26. The Managing Director and Deputy Managing Director:

- (a) shall be appointed with effect from the days respectively specified in their instruments of appointment; and
- (b) hold office during the Board’s pleasure.

Managing Director and Deputy Managing Director hold office on full time basis

“26A. The Managing Director and Deputy Managing Director hold office on a full time basis.

Terms and conditions of appointment not provided for by Act

“26B. The Managing Director and Deputy Managing Director hold office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board.

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Disclosure of interests

“26C. The Managing Director and Deputy Managing Director shall give written notice to the Chairman of the Board of all direct and indirect pecuniary interests that they have or acquire in any business or in any body corporate carrying on any business.

Exclusion of Managing Director and Deputy Managing Director from certain deliberations

“26D. The Managing Director and Deputy Managing Director shall not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

- (a) the appointment of a person as Managing Director or Deputy Managing Director;
- (b) the determination or application of any terms or conditions on which the Managing Director or Deputy Managing Director holds office; or
- (c) the termination of the appointment of the Managing Director or Deputy Managing Director.”.

Repeal of section 112

16. Section 112 of the Principal Act is repealed.

17. After section 121 of the Principal Act the following section is inserted:

Information relating to remuneration of Managing Director and Deputy Managing Director

“121A. (1) The financial statements of the Corporation shall comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation.

“(2) For the purposes of subsection (1):

- (a) the Corporation shall be taken to be a listed corporation; and
- (b) the Managing Director and Deputy Managing Director shall be taken to be executive officers of the Corporation.

“(3) Expressions used in this section that are also used in the *Companies Act 1981* have the same respective meanings as they have in that Act.”.

Transitional provision—existing Manager Director

18. (1) The person who, immediately before the commencement of this section, held office as Managing Director continues to hold that office.

(2) Sections 25, 26 and 112 of the Principal Act continue to apply in relation to the person.

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(3) Sections 25 to 26D (inclusive) of the Principal Act as amended by this Act do not apply in relation to the person.

(4) Subsections (2) and (3) cease to have effect when the office of Managing Director next becomes vacant (whether at the end of the present period of appointment of the person or otherwise).

Transitional provision—existing Deputy Managing Director

19. (1) The person who, immediately before the commencement of this section, held office as Deputy Managing Director continues to hold that office.

(2) Sections 25, 26 and 112 of the Principal Act continue to apply in relation to the person.

(3) Sections 25 to 26D (inclusive) of the Principal Act as amended by this Act do not apply in relation to the person.

(4) Subsections (2) and (3) cease to have effect when the office of Deputy Managing Director next becomes vacant (whether at the end of the present period of appointment of the person or otherwise).

**PART IV—AMENDMENT OF THE LONG SERVICE LEAVE
(COMMONWEALTH EMPLOYEES) ACT 1976**

Principal Act

20. In this Part, “Principal Act” means the *Long Service Leave (Commonwealth Employees) Act 1976*³.

Meaning of employment in Government Service

21. Section 10 of the Principal Act is amended by inserting after paragraph (6) (aa) the following paragraph:

“(ab) who is the holder of a principal executive office within the meaning of the *Remuneration Tribunals Act 1973* (other than a principal executive office prescribed for the purposes of this paragraph);”.

**PART V—AMENDMENTS OF THE REMUNERATION TRIBUNALS
ACT 1973**

Principal Act

22. In this Part, “Principal Act” means the *Remuneration Tribunals Act 1973*⁴.

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Interpretation

23. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“‘employing body’, in relation to a principal executive office, means the person, authority or body declared by the regulations to be the employing body for the office;

‘principal executive office’ means an office or appointment declared by regulations made for the purposes of paragraph (4) (ra) to be a principal executive office;

‘public office’ has the meaning given by subsection (4);”;

(b) by inserting after paragraph (4) (r) the following paragraph:

“(ra) an office or appointment declared by regulations made for the purposes of this paragraph to be a principal executive office;”.

Functions of the Tribunal

24. Section 5 of the Principal Act is amended:

(a) by adding at the end of subsection (1) the following words and paragraphs:

“, having regard to:

(a) the Principles of Wage Determination established from time to time by the Australian Industrial Relations Commission; and

(b) decisions given from time to time by the Australian Industrial Relations Commission in National Wage Cases”;

(b) by omitting subsection (2) and substituting the following subsection:

“(2) An additional function of the Tribunal is to provide advice to public statutory corporations, government business enterprises and other employing bodies in relation to terms and conditions (including remuneration and allowances) on which principal executive offices are to be held.”.

Annual report

25. Section 12AA of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) The Tribunal shall include in the report an assessment of the general operation of subsection 5 (2).”.

PART VI—AMENDMENTS OF THE RESERVE BANK ACT 1959

Principal Act

26. In this Part, “Principal Act” means the *Reserve Bank Act 1959*.

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Meetings of Board

27. Section 21 of the Principal Act is amended:

- (a) by omitting from subsection (2) "The Chairperson shall" and substituting "Subject to section 21A, the Chairperson shall";
- (b) by omitting from subsection (3) ", of whom the Chairperson or the Deputy Chairperson shall be one,".

28. After section 21 of the Principal Act the following section is inserted:

Exclusion of Governor and Deputy Governor from certain deliberations

"21A. (1) The Governor and the Deputy Governor shall not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to the determination or application of any terms or conditions on which the Governor or the Deputy Governor holds office.

"(2) Where the Governor and the Deputy Governor are required by subsection (1) not to be present during deliberations of the Board, the members present shall appoint one of their number to preside."

29. Section 24A of the Principal Act is repealed and the following section is substituted:

Terms and conditions of appointment not provided for by Act

"24A. The Governor and the Deputy Governor hold office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board."

Repeal of section 72

30. Section 72 of the Principal Act is repealed.

31. After section 81 of the Principal Act the following section is inserted:

Information relating to remuneration of Governor and Deputy Governor

"81A. (1) The financial statements of the Bank shall comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation.

"(2) For the purposes of subsection (1):

- (a) the Bank shall be taken to be a listed corporation; and
- (b) the Governor and Deputy Governor shall be taken to be executive officers of the Bank.

"(3) Expressions used in this section that are also used in the *Companies Act 1981* have the same respective meanings as they have in that Act."

**PART VII—AMENDMENTS OF THE SNOWY MOUNTAINS
ENGINEERING CORPORATION ACT 1970**

Principal Act

32. In this Part, “Principal Act” means the *Snowy Mountains Engineering Corporation Act 1970*⁶.

33. Section 32 of the Principal Act is repealed and the following sections are substituted:

Appointment

“32. (1) The Managing Director shall be appointed by the Minister after the Minister has received a recommendation from the Board.

“(2) The Minister shall not appoint a part-time Director as Managing Director.

“(3) The appointment of a person as Managing Director is not invalid because of a defect or irregularity in relation to the appointment.

Holding of office during Board’s pleasure etc.

“32A. The Managing Director:

- (a) shall be appointed with effect from the day specified in the instrument of appointment; and
- (b) holds office during the Board’s pleasure.”.

Managing Director not to engage in other work

34. Section 33 of the Principal Act is amended by omitting “Minister” and substituting “Board”.

35. Sections 34, 35, 36 and 37 of the Principal Act are repealed and the following sections are substituted:

Terms and conditions of appointment not provided for by Act

“34. The Managing Director holds office on such terms and conditions (including terms and conditions relating to remuneration and allowances) in relation to matters not provided for by this Act as are determined by the Board.

Disclosure of interests

“35. The Managing Director shall give written notice to the Chairperson of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.”.

36. After section 38 of the Principal Act the following section is inserted in Division 1 of Part V:

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Exclusion of Managing Director etc. from certain deliberations

“38A. (1) The Managing Director shall not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

- (a) the appointment of a person as Managing Director;
- (b) the determination or application of any terms or conditions on which the Managing Director holds office; or
- (c) the termination of the appointment of the Managing Director.

“(2) A person appointed to act as Managing Director shall not be present during any deliberation of the Board, or take part in any decision of the Board, in relation to:

- (a) the appointment of a person to act as Managing Director;
- (b) the determination or application of any terms or conditions on which a person appointed to act as Managing Director holds office; or
- (c) the termination of the appointment of the person.”.

37. After section 52 of the Principal Act the following section is inserted:

Information relating to remuneration of Managing Director

“52A. (1) The financial statements of the Corporation prepared under section 63H of the *Audit Act 1901* (as that section applies in relation to the Corporation under subsection 49 (1) of this Act) shall comply with the requirements prescribed under the *Companies Act 1981* for the accounts of a listed corporation so far as those requirements relate to the income of executive officers of a listed corporation.

“(2) For the purposes of subsection (1):

- (a) the Corporation shall be taken to be a listed corporation; and
- (b) the Managing Director shall be taken to be an executive officer of the Corporation.

“(3) Expressions used in this section that are also used in the *Companies Act 1981* have the same respective meanings as they have in that Act.”.

NOTES

1. No. 41, 1956, as amended. For previous amendments, see No. 87, 1962; No. 88, 1964, No. 4, 1966; No. 145, 1968; No. 55, 1969; No. 216, 1973; No. 83, 1974; No. 153, 1977; No. 36, 1978; No. 39, 1980; No. 26, 1982; Nos. 115, 127 and 136, 1983; No. 72, 1984; No. 65, 1985; and No. 76, 1986.
2. No. 5, 1959, as amended. For previous amendments, see No. 75, 1961; No. 3, 1962; No. 57, 1963; No. 132, 1965; Nos. 58 and 93, 1966; No. 144, 1968; Nos. 18, 117 and 216, 1973; No. 81, 1974; Nos. 36 and 77, 1978; No. 177, 1980; No. 29, 1981; No. 92, 1983; Nos. 63 and 76, 1984; No. 194, 1985; and No. 182, 1987.

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3. No. 192, 1976, as amended. For previous amendments, see No. 9, 1978; Nos. 52 and 155, 1979; Nos. 6 and 61, 1981; No. 141, 1983; No. 63, 1984; No. 166, 1985; and No. 6, 1988.
4. No. 215, 1973, as amended. For previous amendments, see No. 80, 1974; No. 96, 1975; Nos. 60 and 178, 1978; Nos. 26, 108, 136 and 155, 1979; No. 160, 1980; Nos. 61, 74 and 176, 1981; Nos. 78 and 111, 1982; Nos. 39 and 128, 1983; Nos. 63, 73 and 164, 1984; and Nos. 65 and 187, 1985.
5. No. 4, 1959, as amended. For previous amendments, see No. 96, 1965; No. 93, 1966; Nos 118 and 216, 1973; No. 36, 1978; No. 155, 1979; No. 70, 1980; No. 122, 1981; Nos. 63 and 76, 1984; No. 65, 1985; and No. 166, 1986.
6. No. 39, 1970, as amended. For previous amendments, see No. 125, 1970; No. 22, 1971; Nos. 74 and 216, 1973; No. 36, 1978; No. 101, 1985; and No. 76, 1986.

*[Minister's second reading speech made in—
House of Representatives on 31 August 1988
Senate on 24 November 1988]*