



# **Commonwealth Services Delivery Agency Act 1997**

**No. 31, 1997**

**An Act to establish an agency for the provision of  
certain Commonwealth services, and for related  
purposes**



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**An Act to establish an agency for the provision of  
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purposes**

*[Assented to 17 April 1997]*

The Parliament of Australia enacts:

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Commonwealth Services Delivery Agency Act 1997*.

### 2 Commencement

This Act commences on 1 July 1997.

### 3 Definitions

In this Act, unless the contrary intention appears:

**Agency** means the body called the Commonwealth Services Delivery Agency established by this Act.

**appointed member** means a member of the Board appointed by the Minister under section 16, except a member who is the principal officer of a Commonwealth authority.

**benefit** includes:

- (a) a pension, allowance, concession or payment; and
- (b) a card entitling its holder to a concession or a payment of any kind.

**Board** means the Board of Management of the Agency.

**Chairman** means the Chairman of the Board.

**Commonwealth authority** means:

- (a) a Department of State; or
- (b) a body, other than the Agency, established for a public purpose by or under a law of the Commonwealth.

**Commonwealth service** means a service, benefit, program or facility for some or all members of the public that is provided for by the Commonwealth, whether under an enactment or otherwise.

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**employee** means a member of the Agency's staff referred to in subsection 35(1) or employed under subsection 35(3).

**enactment** means:

- (a) an Act; or
- (b) an instrument (including rules, regulations and by-laws) made under an Act.

**member** means a member of the Board, and includes the Chairman.

**principal officer** means:

- (a) for a Department of State—the person who is the Secretary of the Department for the purposes of the *Public Service Act 1922*; or
- (b) for any other Commonwealth authority—the person identified by the regulations as the principal officer of the authority.

**service arrangements** means arrangements entered into under section 7.

#### **4 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

#### **5 External Territories**

This Act extends to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

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## **Part 2—Establishment, functions and powers of the Agency**

### **6 Establishment of Agency**

- (1) A body called the Commonwealth Services Delivery Agency is established by this subsection.
- (2) The Agency comprises:
  - (a) the Board; and
  - (b) the Chief Executive Officer; and
  - (c) the employees.

### **7 Service arrangements**

- (1) The Chief Executive Officer may enter into arrangements with the principal officer of a Commonwealth authority for the provision of the Commonwealth services specified in the arrangements, subject to the conditions specified in the arrangements.
- (2) Arrangements for the provision of Commonwealth services may include arrangements for doing anything incidental, conducive or related to the provision of the services, including, for example:
  - (a) making the Chief Executive Officer or specified employees, or employees in specified classes of employees, available to exercise powers or perform functions delegated to them under specified enactments; and
  - (b) determining a person's eligibility for, or entitlement to receive or have access to, the services.

### **8 The Agency's functions**

- (1) The Agency has the following functions:
    - (a) the provision of Commonwealth services in accordance with service arrangements, and doing anything included in the
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arrangements that is incidental, conducive or related to the provision of the services;

- (b) any functions conferred on the Agency under any other Act;
  - (c) any functions that the Minister, by written notice given to the Chairman, directs the Agency to perform;
  - (d) doing anything incidental, conducive or related to the performance of any of its other functions.
- (2) A direction under paragraph (1)(c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **9 Ministerial directions about the performance of the Agency's functions**

- (1) The Minister may, by written notice given to the Chairman, give directions to the Board about the performance of the Agency's functions.
- (2) Particulars of any directions given by the Minister under this section in a financial year must be included in the annual report for the Agency for that year.
- (3) The Board must ensure that a direction given under this section is complied with.

### **10 Minister must consult the Board before giving directions**

- (1) The Minister must, before giving a direction under paragraph 8(1)(c) or section 9, by written notice given to the Chairman, ask the Board for its written advice or comments on the impact of the proposed direction on the Agency's operations.
- (2) The Minister must, in giving a direction, have regard to any advice or comments given under this section in relation to the direction.
- (3) If the Minister gives a direction, particulars of any advice or comments given under this section in relation to the direction must be included in the annual report for the Agency for the financial year in which the direction was given.

## **Part 3—The Board of Management of the Agency**

### **Division 1—Establishment, functions, powers and duties**

#### **11 Establishment**

There is to be a Board of Management of the Agency.

#### **12 The Board's functions and powers**

- (1) Subject to this Act and any other Act, the Board's functions are:
  - (a) to decide the Agency's goals, priorities, policies and strategies; and
  - (b) to ensure that the Agency's functions are properly, efficiently and effectively performed.
- (2) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

#### **13 Ministerial directions to the Board**

- (1) The Minister may, by written notice given to the Chairman, give directions to the Board about the performance of its functions, the exercise of its powers or the conduct of its meetings, or in relation to the terms and conditions of appointment of the Chief Executive Officer.
- (2) Particulars of any directions given by the Minister under this section in a financial year must be included in the annual report for the Agency for that year.
- (3) The Board must comply with a direction given under this section.

#### **14 Notification of policies**

- (1) The Minister may, by written notice given to the Chairman, notify the Board of general policies of the Commonwealth Government
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that are to apply in relation to the Agency, the Board or the employees.

- (2) Particulars of any notifications given by the Minister under this section in a financial year must be included in the annual report for the Agency for that year.
- (3) The Board must ensure that the policies are carried out.

### **15 Minister may ask for information**

- (1) The Minister may ask the Board for information about the operation of the Agency.
- (2) The Board must, within a reasonable time, give the Minister the requested information.
- (3) The Board must ensure that any information given to the Minister under this section is accurate.

### **16 Membership of the Board**

- (1) The Board consists of:
  - (a) a Chairman; and
  - (b) the Chief Executive Officer; and
  - (c) at least 4 other members.
- (2) At least 2 of the members mentioned in paragraph (1)(c) must be persons who are not principal officers of Commonwealth authorities.
- (3) The members, except the Chief Executive Officer, are to be appointed by the Minister.
- (4) The appointments are to be made on a part-time basis.

### **17 Acting Chairman**

- (1) The Minister may appoint a member, other than the Chief Executive Officer, to act as the Chairman:
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- (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office.
- (2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in or in connection with the appointment; or
  - (c) the appointment had stopped having effect; or
  - (d) the occasion for the person to act had not arisen or had stopped.

### **18 Delegation by the Board**

- (1) The Board may, by resolution, delegate all or any of its functions or powers to a member or to an employee.
- (2) The delegate must, in exercising a delegated power, comply with any directions of the Board.
- (3) A delegation under this section:
  - (a) may be revoked by resolution of the Board (whether or not constituted by the people who constituted it when the power was delegated); and
  - (b) continues in force in spite of a change in the membership of the Board.

### **19 Delegation by the Chairman**

The Chairman may, in writing, delegate to the Chief Executive Officer or an employee all or any of the functions or powers of the Chairman.

## **Division 2—Meetings**

### **20 Meetings**

- (1) The Board must hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Chairman:
  - (a) may convene a meeting at any time; and
  - (b) must convene a meeting on receipt of a written request signed by at least 2 other members.
- (3) The Minister may convene a meeting at any time.
- (4) The Chairman must, if present at a meeting, preside at it.
- (5) If the Chairman is not present at a meeting, the members present at the meeting must elect one of them to preside.
- (6) A member is not entitled to vote at a meeting if the member:
  - (a) is the principal officer of a Commonwealth authority; and
  - (b) has entered into service arrangements that are in force.
- (7) At a meeting, a quorum consists of a majority of the members who are entitled to vote.
- (8) Questions arising at a meeting are to be determined by a majority of the votes of the members present and voting.

### **21 Disclosure of interests**

- (1) A member who has a direct or indirect pecuniary interest in a matter that is being considered, or is about to be considered, by the Board must disclose the nature of the interest at a meeting of the Board.

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- (2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge, and must be recorded in the minutes of the meeting.
- (3) Unless the Board or the Minister otherwise determines, the member:
  - (a) must not be present during any deliberation by the Board on the matter; and
  - (b) must not take part in any decision of the Board on the matter.
- (4) For the purposes of any determination being made under subsection (3), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates:
  - (a) must not be present during any deliberation by the Board on whether to make the determination; and
  - (b) must not take part in making the determination.

**22 Procedure at meetings**

Subject to this Part, the Board may regulate proceedings at its meetings as it thinks appropriate.

## **Division 3—Administrative provisions**

### **23 Period of appointment of certain members**

- (1) Subject to this Division, an appointed member holds office for the period (not longer than 3 years) specified in the instrument of appointment, but is eligible for re-appointment.
- (2) A member who is the principal officer of a Commonwealth authority holds office during the Minister's pleasure.

### **24 Remuneration and allowances of certain appointed members**

- (1) An appointed member is to be paid the remuneration determined by the Remuneration Tribunal. However, if no such determination is in operation, an appointed member is to be paid the remuneration prescribed by the regulations.
- (2) An appointed member is to be paid the allowances prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **25 Outside employment**

An appointed member must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's duties.

### **26 Resignation**

An appointed member may resign from the Board by giving the Minister a written resignation.

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**27 Terms and conditions not provided for by Act**

An appointed member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as the Minister determines in writing.

**28 Termination of appointment**

- (1) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.
- (2) If an appointed member:
  - (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for their benefit; or
  - (b) without reasonable excuse, contravenes section 21; or
  - (c) is absent, without reasonable excuse, from 3 consecutive meetings of the Board; or
  - (d) has, in the Minister's opinion, performed his or her functions as a member unsatisfactorily for a significant period;the Minister must terminate the member's appointment.
- (3) If a member who is the principal officer of a Commonwealth authority stops being the principal officer of the authority, he or she stops being a member.



## **Part 4—The Chief Executive Officer and employees**

### **Division 1—The Chief Executive Officer**

#### **29 Appointment**

- (1) There is to be a Chief Executive Officer of the Agency.
- (2) The Chief Executive Officer is to be appointed by the Board in writing after consultation between the Chairman and the Minister.
- (3) The Chief Executive Officer is to be appointed on a full-time basis.

#### **30 Terms and conditions and termination of appointment**

- (1) The Chief Executive Officer holds office on terms and conditions, including remuneration and allowances, determined by the Board in writing.
- (2) The Board must not make a determination under subsection (1) before it has obtained advice from the Remuneration Tribunal in relation to the terms and conditions, including remuneration and allowances, on which the Chief Executive Officer is to hold office.
- (3) Particulars of any advice obtained from the Remuneration Tribunal under this section in a financial year must be included in the annual report for the Agency for that year.
- (4) The Chief Executive Officer:
  - (a) must not be present during any deliberation by the Board on the remuneration and allowances payable to the Chief Executive Officer; and
  - (b) must not take part in any decision of the Board on the matter.
- (5) The Board may at any time terminate the appointment of the Chief Executive Officer.

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**31 Acting Chief Executive Officer**

- (1) The Board may appoint a person to act as the Chief Executive Officer:
  - (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office.
- (2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in or in connection with the appointment; or
  - (c) the appointment had stopped having effect; or
  - (d) the occasion for the person to act had not arisen or had stopped.

**32 Duties**

Subject to this Act and any other Act, the Chief Executive Officer is, under the Board, responsible for the day-to-day administration of the Agency and the control of its operations.

**33 Delegation by Chief Executive Officer**

The Chief Executive Officer may, in writing, delegate to an employee all or any of the functions or powers of the Chief Executive Officer (including functions or powers delegated to the Chief Executive Officer in accordance with service arrangements).

**34 Resignation**

The Chief Executive Officer may resign by giving the Chairman a written resignation.

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## **Division 2—Staff and consultants**

### **35 Staff**

- (1) Subject to this Division, the Agency's staff are to be persons appointed or employed under the *Public Service Act 1922*.
- (2) The Chief Executive Officer has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the employees referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service.

### **36 Services of certain officers etc. to be made available to Agency**

The Chief Executive Officer may arrange with the principal officer of a Commonwealth authority for the services of officers or employees of the authority to be made available to the Agency.

### **37 Consultants**

- (1) The Chief Executive Officer may engage as consultants persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement are to be determined by the Chief Executive Officer.

## Part 5—Miscellaneous

### 38 Use of protected names and symbols

- (1) A person must not, without the Chairman's written consent:
- (a) use in relation to a business, trade, profession or occupation;  
or
  - (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship, aircraft or other craft; or
  - (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire;  
or
  - (d) use in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of the supply or use of goods or services:
- either:
- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
  - (f) the protected symbol, or a symbol so closely resembling the protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

- (2) Subsection (1), so far as it applies in relation to a particular protected name or the protected symbol, does not affect rights conferred by law on a person in relation to:
- (a) a trade mark that is a registered trade mark for the purposes of the *Trade Marks Act 1995*; or
  - (b) a design registered under the *Designs Act 1906*;
- that was so registered at the protection time in relation to the name or symbol.

- (3) This section, so far as it applies in relation to a particular protected name or the protected symbol, does not affect the use, or rights conferred by law relating to the use, of a name or symbol (the *relevant name or symbol*) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:
- (a) was using the relevant name or symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.
- (4) In this section:

*protected name* means any of the following names:

- (a) “Commonwealth Services Delivery Agency”;
- (b) such other names as are prescribed.

*protected symbol* means the Agency’s official symbol, whose design is set out in the regulations.

*protection time* means:

- (a) in relation to the name “Commonwealth Services Delivery Agency”—the time immediately before the commencement of this Act; or
- (b) in relation to any other name—the time immediately before the commencement of the regulation prescribing the name; or
- (c) in relation to the protected symbol—the time immediately before the commencement of the regulation setting out the design of the symbol.

### **39 Application of the *Audit Act 1901***

- (1) If the *Audit Act 1901* is not repealed on or before the commencing day, that Act applies in relation to the Agency, until it is repealed, as if:

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- (a) references to the Secretary were references to the Chairman of the Board of Management; and
  - (b) references to a Department were references to the Agency; and
  - (c) subsection 2AB(2) of that Act were repealed.
- (2) In this section:

*commencing day* means the day on which this Act commences.

**40 Annual report**

- (1) The Chairman must, as soon as practicable after 30 June in each year, prepare and give the Minister a report of the operations of the Agency during the year that ended on that 30 June.
- (2) The Minister must cause a copy of each report under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

**41 Regulations**

The Governor-General may make regulations 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.

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*[Minister's second reading speech made in—  
House of Representatives on 4 December 1996  
Senate on 4 March 1997]*

(184/96)