



## **AIDC Sale Act 1997**

**No. 67, 1997**

**An Act to amend the *Australian Industry  
Development Corporation Act 1970*, and for other  
purposes**



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## **An Act to amend the *Australian Industry Development Corporation Act 1970*, and for other purposes**

[Assented to 5 June 1997]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *AIDC Sale Act 1997*.

### **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 2 commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister
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is satisfied that the Australian Industry Development Corporation has no assets and no liabilities.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### ***Australian Industry Development Corporation Act 1970***

#### **1 Subsection 4(1)**

Insert:

*core functions*, in relation to the Corporation, means the functions referred to in paragraphs 6(1)(a) and (b).

*designated time* has the meaning given by section 34W.

*ordinary Director* means a Director referred to in paragraph 11(1)(c).

#### **2 Subsection 4(1) (definition of *receiving subsidiary*)**

Omit “subsidiary of the Corporation”, substitute “company”.

#### **3 After section 4B**

Insert:

#### **4C Crown to be bound**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.
- (3) The protection in subsection (2) does not apply to an authority of the Crown.

#### **4 At the end of subparagraph 6(1)(a)(ii)**

Add “and”.

#### **5 At the end of subsection 6(1)**

Add:

; and (c) such other functions as are conferred on the Corporation by Part VI.

**6 After subsection 6(1)**

Insert:

(1AA) Paragraphs (1)(a) and (b) have effect subject to section 9 (which deals with directions to the Corporation).

**7 Subsections 6(1A), (2), (3) and (4)**

Omit “functions” (wherever occurring), substitute “core functions”.

**8 Subsection 6(1A)**

Omit “The Corporation”, substitute “Before the designated time, the Corporation”.

**9 Subsection 6(2)**

Omit “The Corporation”, substitute “Before the designated time, the Corporation”.

**10 After subsection 7(2)**

Insert:

(2A) Subsections (1) and (2) have effect subject to section 9 (which deals with directions to the Corporation).

**11 Subsection 7(3)**

Omit “The consolidated”, substitute “Before the designated time, the consolidated”.

**12 Before subsection 8(1)**

Insert:

(1A) This section does not apply to the Corporation after the designated time.

**13 Section 8**

Omit “functions” (wherever occurring), substitute “core functions”.

**14 Before subsection 8A(1)**

Insert:

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- (1A) This section does not apply to the Corporation after the designated time.

**15 Paragraph 8A(2)(a)**

Omit “functions”, substitute “core functions”.

**16 Section 9**

Repeal the section, substitute:

**9 Ministerial directions**

- (1) The Minister may, by written notice given to the Board, give directions to the Corporation about the performance of the Corporation’s functions or the exercise of the Corporation’s powers.
  - (2) A direction under subsection (1) may be given for the purposes of winding down the various activities of the Corporation and, in particular, a direction may:
    - (a) require the Corporation to:
      - (i) cease to perform a specified function; or
      - (ii) cease to exercise a specified power; or
    - (b) impose restrictions or conditions on:
      - (i) the performance by the Corporation of a specified function; or
      - (ii) the exercise by the Corporation of a specified power.
- Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.
- (3) A direction under subsection (1) may make provision for or in relation to a matter by conferring a power on the Minister.
  - (4) Subsections (2) and (3) do not, by implication, limit subsection (1).
  - (5) The Corporation must comply with a direction under subsection (1).
  - (6) A copy of a direction under subsection (1) is to be published in the *Gazette* within 14 days after the giving of the direction.

**17 Section 11**

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Repeal the section, substitute:

## **11 Membership of Board**

- (1) The Board consists of the following members:
  - (a) the Chairman of the Board;
  - (b) the Chief Executive of the Corporation;
  - (c) such number of other members as the Minister appoints.
- (2) The Chairman and the ordinary Directors are to be appointed by the Minister by written instrument. The appointment takes effect from the day specified in the instrument.
- (3) The Chairman and the ordinary Directors hold office during the Minister's pleasure.
- (4) The Chairman and the ordinary Directors hold office on a part-time basis.
- (5) The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

## **18 Section 12**

Repeal the section.

## **19 Subsections 13(1) and (2)**

Repeal the subsections, substitute:

- (1) The Chief Executive is to be appointed by the Board.
- (2) The Board must not appoint the Chairman or an ordinary Director as the Chief Executive.

## **20 After section 14**

Insert:

### **14A Resignation of Chief Executive**

The Chief Executive may resign by writing signed by him or her and sent to the Board.

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**21 Section 16**

Repeal the section, substitute:

**16 Remuneration and allowances**

- (1) The Chairman and the ordinary Directors are to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, the Chairman and the ordinary Directors are to be paid such remuneration as is prescribed.
- (3) The Chairman and the ordinary Directors are to be paid such allowances as are prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**22 Section 17**

Repeal the section.

**23 Section 18**

Repeal the section, substitute:

**18 Resignation**

The Chairman or an ordinary Director may resign by writing signed by him or her and sent to the Minister.

**24 Section 19**

Repeal the section.

**25 Subsection 20(2)**

Repeal the subsection, substitute:

- (2) The Chief Executive must not be appointed to act as the Chairman.

**26 Subsection 20A(1)**

Omit “the Director referred to in paragraph 11(1)(e)”, substitute “an ordinary Director”.

**27 Paragraph 20A(1)(a)**

Omit “the office of the”, substitute “an office of ordinary”.

**28 Paragraph 20A(1)(b)**

Omit “that Director”, substitute “an ordinary Director”.

**29 Subsection 20A(2)**

Omit “the Director referred to in paragraph 11(1)(e)”, substitute “a Director under subsection (1)”.

**30 At the end of section 23**

Add:

- (2) Subsection (1) does not apply to an officer or employee of the receiving subsidiary unless the receiving subsidiary is a subsidiary of the Corporation.

**31 At the end of section 23A**

Add:

- (2) Subsection (1) does not apply to an officer or employee of the receiving subsidiary unless the receiving subsidiary is a subsidiary of the Corporation.

**32 Section 24A**

Repeal the section, substitute:

**24A Payment of amounts to the Commonwealth**

- (1) The Minister may give the Corporation a written direction requiring the Corporation to pay a specified amount to the Commonwealth before a specified time.
- (2) The Corporation must comply with a direction under subsection (1).

**33 Subsection 27(1B)**

Omit “The Corporation”, substitute “Subject to section 33X, the Corporation”.

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**34 Section 29W**

Omit all the words after “subsidiary”, substitute:

“is taken to be a Commonwealth authority for the purposes of that Part throughout the period:

- (a) beginning at the start of the transfer day of the transferred staff member; and
- (b) ending when the receiving subsidiary ceases to be a subsidiary of the Corporation.

**35 At the end of section 29W**

Add:

- (2) Subsection (1) does not prevent the receiving subsidiary from being a Commonwealth authority for the purposes of Part IV of the *Public Service Act 1922* if paragraph (b) of the definition of ***Commonwealth authority*** in section 87 of that Act applies to the receiving subsidiary.

**36 Part V (heading)**

Repeal the heading, substitute:

**Part V—Staff**

**37 Subsection 30(3)**

Repeal the subsection.

**38 Subsection 33(2)**

Omit “the Director referred to in paragraph 11(1)(e),”, substitute “an ordinary Director,”.

**39 After section 33**

Insert:

## Part VI—Transfer of assets of AIDC bodies

### Division 1—Preliminary

#### 33A Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a scheme under which assets of AIDC bodies may be transferred to other persons.
- An *AIDC body* is defined to mean:
  - (a) the Corporation; or
  - (b) a wholly-owned subsidiary of the Corporation.
- AIDC Ltd is the principal subsidiary of the Corporation as at the commencement of this section. If a minority of shares in AIDC Ltd are owned by persons other than the Corporation, provision is made for the compulsory acquisition of those shares by the Corporation.
- An AIDC body may be directed to sell or transfer any of its assets.
- The assets, contracts and liabilities of an AIDC body may be transferred by declaration.
- If assets, contracts or liabilities of an AIDC body have been transferred to the Commonwealth, the assets, contracts or liabilities may be transferred by the Commonwealth to other persons.
- Commonwealth guarantees relating to the Corporation's liabilities will continue even if the liabilities are transferred.

- An AIDC body may be required to pay to the Commonwealth an amount equal to any consideration received for the sale or transfer of any of the body's assets or contracts.
- Provision is made for the adjustment of the dividend franking account balances of companies that cease to be wholly-owned subsidiaries of the Corporation.
- Certain transactions under this Part are exempt from stamp duty and similar taxes.
- The Commonwealth may take over obligations of AIDC bodies.
- AIDC bodies, directors of AIDC bodies, and certain other persons, may be required to assist the Commonwealth or the Corporation in connection with the implementation of this Part.
- The Federal Court may grant injunctions relating to the enforcement of this Part.
- Provision is made for compensation for acquisition of property.
- Provision is made for transitional arrangements relating to:
  - (a) long service leave; and
  - (b) the *Safety, Rehabilitation and Compensation Act 1988*; and
  - (c) the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

### **33B Interpretation**

In this Part, unless the contrary intention appears:

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**AIDC body** means:

- (a) the Corporation; or
- (b) a wholly-owned subsidiary of the Corporation.

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**contract** includes:

- (a) a deed; and
- (b) a deed poll.

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

**instrument** includes a document.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

**sale day**, in relation to AIDC Ltd, has the meaning given by section 33D.

**sale scheme body** means:

- (a) an AIDC body; or
- (b) if all the shares in a particular company have vested in the Commonwealth under section 33K:
  - (i) that company; or
  - (ii) a wholly-owned subsidiary of that company.

**voting share** has the same meaning as in the Corporations Law.

**wholly-owned subsidiary** has the meaning given by section 33C.



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**33C Wholly-owned subsidiary**

For the purposes of this Part, a body corporate (the *first body*) is a *wholly-owned subsidiary* of another body corporate (the *second body*) if, and only if:

- (a) the first body has a share capital; and
- (b) there is no share in the first body that is not beneficially owned by:
  - (i) the second body; or
  - (ii) a company that is a wholly-owned subsidiary of the second body because of any other application or applications of this section.

**33D Sale day for AIDC Ltd**

- (1) If, in the opinion of the Minister for Finance, a particular day is the first day after the commencement of this Part on which a majority of the voting shares in AIDC Ltd are or were acquired by a person, or persons, other than:
  - (a) the Corporation; or
  - (b) a nominee of the Corporation;
  - (c) the Commonwealth; or
  - (d) a nominee of the Commonwealth;the Minister for Finance must, by notice in the *Gazette*, declare the day to be the *sale day* for AIDC Ltd.
- (2) The declaration has effect accordingly.
- (3) The notice must be published within 21 days after the sale day.

**Division 2—Transfer of minority interests in AIDC Ltd to the Corporation****33E Transfer of minority interests in AIDC Ltd to the Corporation**

- (1) This section applies to a person (other than the Corporation) if the person legally owns one or more shares in AIDC Ltd.
  - (2) The Minister for Finance must, before 1 July 1998, by writing, make any or all of the following declarations:
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- (a) a declaration that the legal and beneficial interests in all of those shares vest in the Corporation at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to any or all of those shares continues to have effect after the legal and beneficial interests in those shares vest in the Corporation as if a reference in the instrument to the person were a reference to the Corporation;
  - (c) a declaration that the Corporation becomes the person's successor in law in relation to those shares immediately after the legal and beneficial interests in those shares vest in the Corporation.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) A time specified under paragraph (2)(a) must be a time when the percentage of the total paid-up share capital of AIDC Ltd in which the Corporation holds a beneficial interest is at least 90%.

### **33F Registration of shareholder**

- (1) If the legal and beneficial interest in a share vests in the Corporation under section 33E, AIDC Ltd must register the Corporation as the holder of the share.
- (2) Subsection (1) has effect despite anything in the Corporations Law.

### **33G Notification of acquisition of minority interests**

If a declaration is made under subsection 33E(2) in relation to one or more shares legally owned by a person, the Minister for Finance must give a copy of the declaration to the person as soon as practicable after the legal and beneficial interests in the shares vest in the Corporation.

### **33H Compensation**

- (1) If the operation of section 33E results in the acquisition of property from a person, the Corporation is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Corporation and the person cannot agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Corporation of such reasonable amount of compensation as the court determines.

### **Division 3—Transfers of assets, liabilities etc. of AIDC bodies**

#### **33J Minister for Finance may direct AIDC body to sell or transfer assets**

- (1) The Minister for Finance may, by written notice given to an AIDC body, direct the body to sell or transfer a specified asset of the body.

Note: An asset may be specified by name, by inclusion in a specified class or in any other way.

- (2) The direction may impose on the body requirements that are ancillary or incidental to the sale or transfer, including (but not limited to) any of the following requirements:
  - (a) a requirement that the sale or transfer must be to a specified person;
  - (b) a requirement that the sale or transfer must be completed before a specified time;
  - (c) a requirement that the sale or transfer must be undertaken in a specified manner;
  - (d) in the case of a sale—a requirement that the asset must be sold for a price that is within a specified range;
  - (e) in the case of a sale—a requirement that the asset must be marketed, and that the sale must be undertaken, through a specified agent.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (3) The body must comply with the direction.
- (4) This section does not limit section 33K or 33L.

### **33K Transfer of assets by declaration**

- (1) This section applies to an asset of an AIDC body.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the body were a reference to the person;
  - (c) a declaration that a specified person becomes the body's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) Subsection (2) does not prevent the body from transferring an asset to a person otherwise than under that subsection.
- (6) If a share in a company vests in a person under this section, the company must register the person as the holder of the share.
- (7) Subsection (6) has effect despite anything in the Corporations Law.

### **33KA Special provisions relating to shares in the Australian Submarine Corporation**

- (1) If an AIDC body is the holder of legal or beneficial interests in shares in the Australian Submarine Corporation, the Minister for Finance must:

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- (a) make such a declaration under section 33K as will result in the Australian Industry Development Corporation becoming the holder of those interests before 1 September 1997; or
  - (b) make such a series of successive declarations under section 33K as will result in the Australian Industry Development Corporation ultimately becoming the holder of those interests before 1 September 1997 as a consequence of one or more interposed transfers to other AIDC bodies.
- (2) If the Australian Industry Development Corporation becomes the holder of those interests as a result of the declaration or any of those declarations, this Act does not prevent those interests from being subsequently sold or transferred.
- (3) If the Australian Industry Development Corporation becomes the holder of those interests as a result of the declaration or any of those declarations, the Australian Industry Development Corporation must not subsequently sell or transfer those interests to a foreign person (within the meaning of the *Foreign Acquisitions and Takeovers Act 1975*) unless:
- (a) immediately before the commencement of this section, the foreign person had an entitlement to acquire those interests; and
  - (b) immediately before the commencement of this section, the foreign person was a registered shareholder in the Australian Submarine Corporation; and
  - (c) that entitlement:
    - (i) arises out of a shareholders' agreement; or
    - (ii) relates, directly or indirectly, to the foreign person's capacity as a registered shareholder in the Australian Submarine Corporation; and
  - (d) the sale or transfer:
    - (i) gives effect to that entitlement; or
    - (ii) would have given effect to that entitlement if it were assumed that AIDC bodies and the Australian Industry Development Corporation were the same entity.
- (4) For the purposes of this section, a person is *entitled to acquire* any thing if the person is absolutely or contingently entitled to acquire
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it, whether because of any constituent document of a company, the exercise of any right or option or for any other reason.

(5) In this section:

*Australian Submarine Corporation* means Australian Submarine Corporation Pty Limited.

### **33L Transfer of contractual rights and obligations by declaration**

- (1) This section applies to a contract to which an AIDC body is a party.
  - (2) The Minister for Finance may, by writing, declare that the body's rights and obligations under a specified contract:
    - (a) cease to be rights and obligations of the body at a specified time; and
    - (b) become rights and obligations of a specified person at that time.
  - (3) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the body were a reference to a specified person.
  - (4) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect after the body's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the body were a reference to the person.
  - (5) The Minister for Finance may, by writing, declare that a specified person becomes the body's successor in law, in relation to the body's rights and obligations under a specified contract, immediately after the body's rights and obligations under the contract become rights and obligations of the person.
  - (6) A declaration under this section has effect accordingly.
  - (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
  - (8) This section does not, by implication, limit section 33K.
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Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

### **33M Transfer of liabilities by declaration**

- (1) This section applies to a liability of an AIDC body.
- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
  - (a) a declaration that a specified liability ceases to be a liability of the body and becomes a liability of a specified person at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the body were a reference to the person;
  - (c) a declaration that a specified person becomes the body's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

### **33N Consideration**

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

## **Division 4—Transfers by the Commonwealth**

### **33P Transfer of assets**

- (1) This section applies to an asset that has vested in the Commonwealth under section 33K.

- (2) The Minister for Finance may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified asset vests in a specified person at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
  - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the person.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) Subsection (2) does not prevent the Commonwealth from transferring an asset to a person otherwise than under that subsection.

### **33Q Transfer of contractual rights and obligations**

- (1) This section applies to a contract where rights and obligations under the contract became rights and obligations of the Commonwealth under section 33L.
- (2) The Minister for Finance may, by writing, declare that the Commonwealth's rights and obligations under a specified contract:
- (a) cease to be rights and obligations of the Commonwealth at a specified time; and
  - (b) become rights and obligations of a specified person at that time.
- (3) The Minister for Finance may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to a specified person.



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- (4) The Minister for Finance may, by writing, declare that a specified instrument relating to a specified contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of a specified person, as if a reference in the instrument to the Commonwealth were a reference to the person.
  - (5) The Minister for Finance may, by writing, declare that a specified person becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the person.
  - (6) A declaration under this section has effect accordingly.
  - (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.
  - (8) This section does not, by implication, limit section 33P.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

### **33R Transfer of liabilities**

- (1) This section applies to a liability that became a liability of the Commonwealth under section 33M.
  - (2) The Minister for Finance may, by writing, make any or all of the following declarations:
    - (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of a specified person at a specified time;
    - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of a specified person as if a reference in the instrument to the Commonwealth were a reference to the person;
    - (c) a declaration that a specified person becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the person.
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- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

### **33S Consideration**

- (1) A declaration may be made under this Division, whether or not the declaration is associated with the giving of consideration.
- (2) This section is enacted for the avoidance of doubt.

## **Division 5—Transfer of Commonwealth guarantees**

### **33T Transfer of Commonwealth guarantees**

- (1) This section applies to a liability or obligation of the Corporation if:
  - (a) the liability or obligation is transferred to a person (the *transferee*) under this Part (whether directly or indirectly through an interposed transfer to the Commonwealth); and
  - (b) assuming that the liability or obligation had not been transferred, the payment by the Corporation of money in accordance with the liability or obligation would have been guaranteed by the Commonwealth under section 35.
- (2) By force of this subsection, the Commonwealth guarantees the due payment by the transferee of all money that is, or may at any time become, payable by the transferee to any person other than the Commonwealth in accordance with the liability or obligation, so long as the liability or obligation is not varied.

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## **Division 6—Proceeds of asset transfers to be paid to the Commonwealth**

### **33U Proceeds of asset transfers to be paid to the Commonwealth**

- (1) The Minister for Finance may, by written notice given to an AIDC body, direct that, if the body receives any consideration in respect of:
- (a) the sale or transfer by the body of a specified asset in accordance with a direction under section 33J; or
  - (b) the transfer of a specified asset of the body under section 33K; or
  - (c) the transfer, under section 33L, of the body's rights and obligations under a specified contract;
- the body must pay to the Commonwealth an amount equal to the consideration.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (2) The body must comply with the direction.
- (3) This section does not, by implication, limit section 24A.

## **Division 7—Adjustment of dividend franking account balances**

### **33V Effect of Division**

This Division has effect for the purposes of Part IIIAA of the *Income Tax Assessment Act 1936*.

### **33W Adjustment of class C franking account balances**

- (1) If a company ceases to be a wholly-owned subsidiary of the Corporation, there arises, on the day of the cessation, a class C franking debit of the company.
  - (2) The amount of the franking debit is equal to the class C franking surplus of the company immediately before the cessation.
  - (3) In this section:
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*class C franking surplus*, in relation to a company, has the same meaning as in Part IIIAA of the *Income Tax Assessment Act 1936*.

## **Division 8—Exemption from stamp duty**

### **33X Exemption from stamp duty**

(1) In this section:

*designated matter* means:

- (a) a transfer under section 33E; or
- (b) an agreement relating to a transfer covered by paragraph (a);  
or
- (c) the receipt of money by a person in respect of a transfer covered by paragraph (a); or
- (d) the sale or transfer by an AIDC body of an asset in accordance with a direction under section 33J; or
- (e) an agreement relating to a sale or transfer covered by paragraph (d); or
- (f) the receipt of money by an AIDC body, or by a person acting on behalf of an AIDC body, in respect of a sale or transfer covered by paragraph (d); or
- (g) a transfer under section 33K, 33L or 33M; or
- (h) an agreement relating to a transfer covered by paragraph (g);  
or
- (i) the receipt of money by an AIDC body, or by a person acting on behalf of an AIDC body, in respect of a transfer covered by paragraph (g); or
- (j) a transfer under section 33P, 33Q or 33R; or
- (k) an agreement relating to a transfer covered by paragraph (j);  
or
- (l) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a transfer covered by paragraph (j); or
- (m) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 33K; or
- (n) an agreement relating to a sale or transfer covered by paragraph (m); or

- 
- (o) the receipt of money by the Commonwealth, or by a person acting on behalf of the Commonwealth, in respect of a sale or transfer covered by paragraph (m).
- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
    - (a) a designated 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, a designated matter.

## **Division 9—Commonwealth takeover of obligations**

### **33Y Commonwealth takeover of certain obligations of AIDC bodies**

- (1) This section applies to an obligation (whether contingent or otherwise) of an AIDC body.
- (2) The Treasurer may, on the Commonwealth's behalf, enter into an agreement to take over an obligation.

### **33Z Authorisation of payments—Commonwealth takeover of obligations**

If the Treasurer enters into an agreement under subsection 33Y(2), the Treasurer may authorise the payment of money to discharge the Commonwealth's obligations under the agreement, whether by terminating those obligations or otherwise.

### **34 Appropriation—Commonwealth takeover of obligations**

A payment under section 33Z is to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

### **34A Application of the *Loans Securities Act 1919***

Sections 5A, 5B, 5C and 5D (other than paragraphs (1)(c) and (2)(c)) of the *Loans Securities Act 1919* apply in relation to an obligation that is taken over by the Commonwealth under section 33Y as if that obligation were a borrowing of money outside Australia:

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- (a) that the Treasurer was authorised to make on behalf of the Commonwealth; and
- (b) that the Treasurer made accordingly.

## **Division 10—Sale scheme body to assist the Commonwealth and the Corporation**

### **34B Implementation of this Part**

- (1) A reference in this Division to the *implementation of this Part* includes a reference to:
  - (a) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 33K; and
  - (b) the formulation of the policies and approaches to be adopted by the Minister for Finance in connection with:
    - (i) the implementation of this Part; and
    - (ii) the sale or transfer by the Commonwealth of an asset that has vested in the Commonwealth under section 33K.
- (2) For the purposes of this Division, *this Part* does not include Division 13, 14 or 15.

### **34C Assistance given by a sale scheme body or director in connection with the implementation of this Part**

- (1) A sale scheme body may, on the body's own initiative, assist the Commonwealth or the Corporation in connection with the implementation of this Part.
- (2) A director of a sale scheme body may, on the director's own initiative, assist the Commonwealth or the Corporation in connection with the implementation of this Part.
- (3) A sale scheme body must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth or the Corporation in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.

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- (4) A director of a sale scheme body must, when requested in writing by the Minister for Finance to do so, assist the Commonwealth or the Corporation in connection with the implementation of this Part. The assistance is to be given within the period, and in the form and manner, specified in the request.
  - (5) The Minister for Finance may, by written notice given to a sale scheme body, give directions to the body about the exercise of the body's powers under subsection (1). The body must comply with the direction.
  - (6) The Minister may, by written notice given to a director of a sale scheme body, give directions to the director about the exercise of the director's powers under subsection (2). The director must comply with the direction.
  - (7) To avoid doubt, the giving of assistance as mentioned in subsection (1), (2), (3) or (4), the making of a request under subsection (3) or (4), or the giving of a direction under subsection (5) or (6), does not result in a contravention of, or give rise to a liability or remedy under:
    - (a) a provision of the Corporations Law; or
    - (b) a rule of common law or equity (other than a rule of administrative law).

Note: The expression *sale scheme body* includes the Corporation—see section 33B.

#### **34D Giving of assistance—ancillary provisions**

- (1) The assistance mentioned in subsection 34C(1), (2), (3) or (4) may take the form of:
  - (a) the giving of information; or
  - (b) the giving of financial assistance (within the meaning of section 205 of the Corporations Law); or
  - (c) the giving of a financial benefit to a related party (within the meaning of Part 3.2A of the Corporations Law); or
  - (d) the provision, by the directors or employees of a sale scheme body, of facilities, information and other assistance in connection with the conduct of:
    - (i) a due diligence procedure or a similar process; or

- (ii) a market briefing or a similar process; or
  - (e) the entering into of an agreement with the Commonwealth or the Corporation.
- (2) For the purposes of paragraph (1)(b), if section 205 of the Corporations Law is repealed and replaced by another provision of the Corporations Law that deals with the giving of financial assistance by companies, the reference in that paragraph to section 205 is to be read as a reference to the replacement provision.
- (3) For the purposes of paragraph (1)(c), if Part 3.2A of the Corporations Law is repealed and replaced by another provision of the Corporations Law that deals with the giving of financial benefits to related parties, the reference in that paragraph to Part 3.2A is to be read as a reference to the replacement provision.
- (4) Subsection (1) does not, by implication, limit the forms in which assistance may be given.
- (5) Section 34C does not, by implication, limit any rights that are conferred on shareholders by other laws.
- (6) Section 34C does not, by implication, limit:
  - (a) the executive power of the Commonwealth to enter into an agreement; or
  - (b) the power of the Corporation to enter into an agreement; or
  - (c) the capacity of a sale scheme body, or a director of a sale scheme body, to enter into an agreement with the Commonwealth or the Corporation.
- (7) Section 34C extends to the giving of assistance outside Australia, whether or not in a foreign country.

**34E Use of information by the Commonwealth or the Corporation**

- (1) This section applies to information obtained under section 34C.
- (2) The Commonwealth, the Corporation, or an associated person, may use the information for a purpose in connection with the implementation of this Part.



- (3) The Commonwealth, the Corporation, or an associated person, may disclose the information for a purpose in connection with the implementation of this Part.
- (4) The Commonwealth, the Corporation, or an associated person, may use or disclose the information for a purpose in connection with:
- (a) the Commonwealth's capacity as a shareholder in a sale scheme body; or
  - (b) the Corporation's capacity as a shareholder in a sale scheme body;
- so long as the use or disclosure does not involve giving the information to a person who is not an associated person.
- (5) To avoid doubt, the use or disclosure of information as mentioned in subsection (2), (3) or (4) does not result in a contravention of, or give rise to a liability or remedy under:
- (a) a provision of the Corporations Law; or
  - (b) a rule of common law or equity (other than a rule of administrative law).
- (6) In this section:
- associated person*** means:
- (a) a Minister; or
  - (b) an individual who holds an office under, or is employed by, the Commonwealth; or
  - (c) an officer or employee within the meaning of the *Public Service Act 1922*; or
  - (d) a person who performs services for or on behalf of the Commonwealth in connection with:
    - (i) the implementation of this Part; or
    - (ii) the Commonwealth's capacity as a shareholder in a sale scheme body; or
  - (e) a Director of the Corporation; or
  - (f) an officer or employee of the Corporation; or
  - (g) a person who performs services for or on behalf of the Corporation in connection with:
    - (i) the implementation of this Part; or

- (ii) the Corporation's capacity as a shareholder in a sale scheme body.

**34F Agreements relating to the protection of information**

- (1) The Minister for Finance may, on behalf of the Commonwealth, enter into an agreement with a person relating to the protection of information:
  - (a) that is obtained under section 34C; and
  - (b) the publication of which might be expected to prejudice substantially a sale scheme body's commercial interests.
- (2) An agreement under subsection (1) may be enforced as if it were a contract.
- (3) Subsection (1) does not, by implication, limit the executive power of the Commonwealth to enter into agreements.
- (4) The Corporation may enter into an agreement with a person relating to the protection of information:
  - (a) that is obtained under section 34C; and
  - (b) the publication of which might be expected to prejudice substantially a sale scheme body's commercial interests.
- (5) An agreement under subsection (4) may be enforced as if it were a contract.
- (6) Subsection (4) does not, by implication, limit the power of the Corporation to enter into agreements.

**34G Sale scheme body's obligations to disclose information**

- (1) To avoid doubt, the mere fact that particular information was requested, required or given under section 34C is not a ground on which a sale scheme body can be required to disclose or notify that, or any other, information under:
  - (a) a provision of the Corporations Law; or
  - (b) a provision of the listing rules of a securities exchange.
- (2) In this section:

*listing rules* has the same meaning as in section 1001A of the Corporations Law.

*securities exchange* has the same meaning as in section 1001A of the Corporations Law.

- (3) For the purposes of subsection (2), if section 1001A of the Corporations Law is repealed and replaced by another provision of the Corporations Law that deals with continuous disclosure by listed companies, a reference in that subsection to section 1001A is to be read as a reference to the replacement provision.

## **Division 11—Injunctions**

### **34H Injunctions**

#### *Restraining injunctions*

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Part, the Federal Court may, on the application of the Minister for Finance, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of this Part;
- the Federal Court may, on the application of the Minister for Finance, grant an injunction requiring the person to do that act or thing.

### **34J Interim injunctions**

#### *Grant of interim injunction*

- (1) If an application is made to the court for an injunction under section 34H, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

#### *No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under section 34H, as a condition of granting an interim injunction, to give any undertakings as to damages.

### **34K Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Division.

### **34L Certain limits on granting injunctions not to apply**

#### *Restraining injunctions*

- (1) The power of the court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

#### *Performance injunctions*

- (2) The power of the court under this Division to grant an injunction requiring a person to do an act or thing may be exercised:
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- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

### **34M Other powers of the court unaffected**

The powers conferred on the court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## **Division 12—Miscellaneous**

### **34N Transfers of land may be registered**

- (1) This section applies if:
  - (a) any right, title or interest in particular land vests in a person under section 33K or 33P; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister for Finance; and
    - (ii) identifies the land; and
    - (iii) states that the right, title or interest has become vested in the person under section 33K or 33P, as the case requires.
- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.

- (3) A document that appears to be a certificate under subsection (1) is to be taken to be such a certificate, and to have been properly given, unless the contrary is established.

### **34P Charges may be registered**

- (1) This section applies if:
- (a) a person becomes, under this Part, the holder of a charge; and
  - (b) there is lodged with the Australian Securities Commission a certificate that:
    - (i) is signed by the Minister for Finance; and
    - (ii) identifies the charge; and
    - (iii) states that the person has, under this Part, become the holder of the charge.
- (2) The Australian Securities Commission may, subject to the payment of any applicable fee:
- (a) register the matter in a way that is the same is, or similar to, the way in which assignments of charges are registered; and
  - (b) deal with, and give effect to, the certificate;
- as if the certificate were a notice of assignment of the charge that had been properly lodged with the Commission.

- (3) In this section:

**charge** means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

**holder**, in relation to a charge, includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement.

### **34Q This Part does not modify registers kept by land registration officials**

This Part, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

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**34R Lands Acquisition Act does not apply to this Part**

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

**34S Legislative Instruments Act does not apply to this Part**

To avoid doubt, an instrument made under this Part is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

**34T Transfer of pending proceedings**

- (1) This section applies if, as a result of a declaration made by the Minister for Finance under this Part, a person (the *successor*) becomes the successor in law of another person (the *original person*) at a particular time in relation to a particular asset, liability, right, benefit or obligation.
- (2) If any proceedings to which the original person was a party:
  - (a) were pending in any court or tribunal immediately before that time; and
  - (b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;

then, unless the Minister for Finance otherwise determines in writing in relation to the proceedings, the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

**34U Operation of this Part does not place a person in breach of contract etc.**

To avoid doubt, the operation of this Part is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating:
  - (i) the assignment or transfer of any asset, liability, right or obligation; or

- (ii) the disclosure of any information; or
- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under this Part.

### **34V Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **34W Designated time**

- (1) The Minister for Finance may, by writing, determine that a specified time is the *designated time* for the purposes of this Act. The time must be after the commencement of this section.
- (2) A determination under subsection (1) has effect accordingly.
- (3) A copy of a determination under subsection (1) is to be published in the *Gazette* within 14 days after the making of the determination.



### **34X Delegation**

- (1) The Minister for Finance may, by writing, delegate to:
  - (a) the Secretary to the Department of Finance; or
  - (b) the Chief Executive of the Office of Asset Sales; or
  - (c) a person holding or performing the duties of a Senior Executive Service office (whether or not in the Department of Finance);all or any of the functions and powers conferred on the Minister for Finance by this Part.
- (2) In this section:

*Senior Executive Service office* has the same meaning as in the *Public Service Act 1922*.

### **34Y Commonwealth records**

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983*.

### **34Z This Part does not authorise the imposition of taxation**

This Part does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

## **Division 13—Transitional: long service leave**

### **Subdivision A—Preliminary**

#### **34ZA Definitions**

- (1) Unless the contrary intention appears, expressions used in this Division that are also used in the Long Service Leave Act have the same meanings as in that Act.

(2) In this Division:

*combined service period*, in relation to an employee of AIDC Ltd, means the total of:

- (a) the period that was, immediately before AIDC Ltd's sale day, the employee's period of service for the purposes of the Long Service Leave Act; and
- (b) the period starting on AIDC Ltd's sale day during which the employee continues to be an employee of AIDC Ltd.

*law* means:

- (a) a law of the Commonwealth, a State or a Territory; or
- (b) regulations or any other instrument (other than an award, determination or industrial agreement) made under such a law.

*post-sale long service leave rights*, in relation to an employee of AIDC Ltd, means any long service leave rights that the employee acquires under an award, determination, industrial agreement or law (other than this Part) on or after AIDC Ltd's sale day.

### **34ZB References to Long Service Leave Act**

For the purposes of the application of this Part to a particular employee of AIDC Ltd, a reference in this Division to the *Long Service Leave Act* is a reference to the *Long Service Leave (Commonwealth Employees) Act 1976* as in force immediately before AIDC Ltd's sale day.

### **34ZC Division not to affect an employee's post-sale long service leave rights**

To avoid doubt, it is declared that this Division does not affect an employee's post-sale long service leave rights.

### **Subdivision B—Long service leave for employees who attain at least 10 years service**

#### **34ZD Simplified outline**

The following is a simplified outline of this Subdivision:

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| <ul style="list-style-type: none"><li>• This Subdivision is about the long service leave that may be granted to an employee of AIDC Ltd who attains at least 10 years service. It also deals with employees who reach minimum retiring age or are retrenched.</li></ul> |
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**34ZE Employees who attain 10 years service**

- (1) AIDC Ltd may grant an employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 34ZP(1) if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd until his or her combined service period was at least 10 years.
- (2) AIDC Ltd may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the period that could have been granted to the employee on full salary.

**34ZF Employees reaching minimum retiring age or being retrenched**

- (1) AIDC Ltd may grant an employee long service leave on full salary for a period up to the employee's long service leave credit under subsection 34ZP(1) if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
  - (d) the employee stopped being an employee of AIDC Ltd, on or after reaching the minimum retiring age, or because of retrenchment; and

- (e) the employee's combined service period at the time when he or she stopped being an employee of AIDC Ltd was at least one year.
- (2) Long service leave granted under this section is to be taken so as to end immediately before the employee stopped being an employee.
- (3) AIDC Ltd may, if the employee asks in writing, grant the employee long service leave on half salary for a period not exceeding twice the period that could have been granted to the employee on full salary.

### **34ZG Rate of salary**

For the purposes of sections 34ZE and 34ZF, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 20 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression "section 16 or 17" in that section there were substituted the expression "section 34ZE or 34ZF of the *Australian Industry Development Corporation Act 1970*".

### **Subdivision C—Payments in lieu of long service leave**

#### **34ZH Simplified outline**

The following is a simplified outline of this Subdivision:

- This Subdivision is about payments in respect of long service leave to an employee of AIDC Ltd who has not used all of his or her long service leave credit by taking long service leave under Subdivision B.

#### **34ZI Employees who attain 10 years service**

Subject to section 34ZL, AIDC Ltd must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 34ZP(2) if:

- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
- (d) the employee stopped being an employee of AIDC Ltd on or after the day on which his or her combined service period reached 10 years.

**34ZJ Employees reaching minimum retiring age or being retrenched**

Subject to section 34ZL, AIDC Ltd must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 34ZP(2) if:

- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
- (d) the employee stopped being an employee of AIDC Ltd, on or after reaching the minimum retiring age, or because of retrenchment; and
- (e) the employee's combined service period at the time when he or she stopped being an employee of AIDC Ltd was at least one year.

**34ZK Employee stops employment because of ill-health**

Subject to section 34ZL, AIDC Ltd must pay an employee an amount equal to full salary in respect of his or her long service leave credit under subsection 34ZP(2) if:

- (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
- (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and

- (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
- (d) the employee stopped being an employee of AIDC Ltd because of ill-health; and
- (e) AIDC Ltd was satisfied that the employee left AIDC Ltd because of ill-health that justified his or her so leaving; and
- (f) when the employee left, his or her combined service period was at least one year.

**34ZL Employee may request non-payment or reduced payment**

- (1) An employee may, by written notice given to AIDC Ltd before the employee stops being an employee of AIDC Ltd:
  - (a) request AIDC Ltd not to make a payment to the employee under section 34ZI, 34ZJ or 34ZK; or
  - (b) request AIDC Ltd to make a payment under that section of a specified amount that is less than the amount that would otherwise be payable under that section.
- (2) AIDC Ltd must comply with the request.

**34ZM Rate of salary**

For the purposes of this Subdivision, the rate of salary to be used in working out the full salary of an employee is the rate that would be applicable to the employee under section 21 of the Long Service Leave Act if:

- (a) that section applied to the employee; and
- (b) for the expression "sections 16 and 17" in that section there were substituted the expression "sections 34ZI, 34ZJ and 34ZK of the *Australian Industry Development Corporation Act 1970*".

**Subdivision D—Payments on the death of an employee**

**34ZN Simplified outline**

The following is a simplified outline of this Subdivision:

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| <ul style="list-style-type: none"><li>• This Subdivision is about payments in respect of long service leave to the dependants or the legal personal representative of an employee of AIDC Ltd who has died.</li></ul> |
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**34ZO Payments on death of an employee**

- (1) AIDC Ltd must make a payment to a dependant or to 2 or more dependants of an employee if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
  - (d) on or after AIDC Ltd's sale day, the employee died and immediately before his or her death:
    - (i) the employee was an employee of AIDC Ltd; and
    - (ii) the employee's combined service period was at least one year; and
    - (iii) the employee had one or more dependants.
- (2) AIDC Ltd must make a payment to the legal personal representative of an employee if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was less than 10 years; and
  - (c) from and after AIDC Ltd's sale day, the employee continued to be employed by AIDC Ltd; and
  - (d) on or after AIDC Ltd's sale day, the employee died and immediately before his or her death:
    - (i) the employee was an employee of AIDC Ltd; and
    - (ii) the employee's combined service period was at least one year; and
    - (iii) the employee did not have any dependants.
- (3) The total amount of the payment or payments is the amount that would have been payable to the employee under section 34ZJ if, on

the day of his or her death, the employee had stopped being an employee of AIDC Ltd on or after reaching the minimum retiring age.

- (4) If subsection (1) or (2) applies, section 23 of the Long Service Leave Act has effect as if:
- (a) that section applied to the employee; and
  - (b) a reference in that section to the approving authority were a reference to AIDC Ltd; and
  - (c) for the expression “this Act” in that section there were substituted the expression “section 34ZO of the *Australian Industry Development Corporation Act 1970*”; and
  - (d) for the expression “subsection 16(7) or 17(5)” in that section there were substituted the expression “section 34ZO of the *Australian Industry Development Corporation Act 1970*”.

### **Subdivision E—Long service leave credit**

#### **34ZP Employee’s long service leave credit for the purposes of Subdivisions B and C**

- (1) For the purposes of sections 34ZE and 34ZF, the long service leave credit of an employee is equal to the long service leave credit that the employee would have under the Long Service Leave Act for the period:
- (a) starting when the employee started his or her period of service; and
  - (b) ending on AIDC Ltd’s sale day;
- if the employee had been retrenched on that sale day.
- (2) For the purposes of sections 34ZI, 34ZJ and 34ZK, an employee’s long service leave credit is the employee’s long service leave credit worked out under subsection (1), reduced by any long service leave credit used under section 34ZE or 34ZF.



## **Subdivision F—Saving: Long Service Leave Act**

### **34ZQ Saving—Accrued rights under the Long Service Leave Act**

- (1) Even though an employee of AIDC Ltd ceases to be employed in Government Service for the purposes of the Long Service Leave Act, the employee's accrued rights under that Act continue while the employee continues to be employed by AIDC Ltd if:
  - (a) the employee was an employee of AIDC Ltd immediately before AIDC Ltd's sale day; and
  - (b) at that time, the employee's period of service for the purposes of the Long Service Leave Act was at least 10 years.However, the employee is not entitled to receive any payment because he or she ceases to be in Government Service.
- (2) If the employee continues to be employed by AIDC Ltd, the Long Service Leave Act has effect after AIDC Ltd's sale day as if AIDC Ltd were an approving authority for the purposes of that Act.

## **Division 14—Transitional: Safety, Rehabilitation and Compensation Act 1988**

### **34ZR Definitions**

Unless the contrary intention appears, expressions used in this Division that are also used in the *Safety, Rehabilitation and Compensation Act 1988* have the same meanings as in that Act.

### **34ZS Continued application of the *Safety, Rehabilitation and Compensation Act 1988***

If AIDC Ltd ceases to be a Commonwealth authority for the purposes of the *Safety, Rehabilitation and Compensation Act 1988*, that Act continues to apply in relation to AIDC Ltd to the extent, and in the manner, set out in this Division.

### **34ZT Continued application to certain employees**

- (1) The *Safety, Rehabilitation and Compensation Act 1988* continues to apply, on and after AIDC Ltd's sale day, in relation to:

- (a) injuries suffered by an employee of AIDC Ltd before its sale day; and
  - (b) loss of, or damage to, property incurred by the employee before AIDC Ltd's sale day;
- if the employee was an employee of AIDC Ltd immediately before its sale day.
- (2) For the purposes of subsection (1), the *Safety, Rehabilitation and Compensation Act 1988* continues to apply as if:
    - (a) AIDC Ltd continued to be a Commonwealth authority; and
    - (b) the Chief Executive Officer of AIDC Ltd (however described) continued to be the Principal Officer of a Commonwealth authority.

**34ZU Transitional provisions relating to Division 4A of Part VII**

- (1) On and after the sale day of AIDC Ltd, Division 4A of Part VII of the *Safety, Rehabilitation and Compensation Act 1988* applies to AIDC Ltd as if:
  - (a) AIDC Ltd continues to be a Commonwealth authority; and
  - (b) AIDC Ltd is not required to pay a premium under that Division in respect of the part of a financial year that occurs after AIDC Ltd's sale day; and
  - (c) the following word and paragraph were added at the end of subsection 96H(1):
    - ; or (f) in the case of an authority—the authority is not required to pay a premium under this Division in respect of part of a financial year.
- (2) If, 60 days after AIDC Ltd's sale day, an amount of premium payable by AIDC Ltd to Comcare in respect of the period before the sale day remains unpaid, the amount is a debt due to the Commonwealth by AIDC Ltd and payable to Comcare.

**34ZV Relevant employer and co-operation with the Commonwealth**

- (1) On and after the sale day of AIDC Ltd, AIDC Ltd is taken to be the relevant employer of the employee for the purposes of section 40 of the *Safety, Rehabilitation and Compensation Act 1988*.

- (2) On and after the sale day of AIDC Ltd, AIDC Ltd must provide such reasonable co-operation and assistance as the Commonwealth requires to enable the Commonwealth to fulfil its obligations under sections 36, 37, 38, 39, 41 and 41A of the *Safety, Rehabilitation and Compensation Act 1988*.

**34ZW Notification of amount of salary paid to employees of AIDC Ltd**

- (1) The Chief Executive Officer (however described) of AIDC Ltd must notify Comcare, within 28 days after AIDC Ltd's sale day, of the amount of salary, wages or pay paid to employees of AIDC Ltd in the pre-sale day period.
- (2) In this section:

*pre-sale day period* means the period starting on 1 July in the financial year in which AIDC Ltd's sale day occurs and ending on the day before that sale day.

**Division 15—Transitional: Occupational Health and Safety (Commonwealth Employment) Act 1991**

**34ZX Refund of contribution paid under the *Occupational Health and Safety (Commonwealth Employment) Act 1991***

- (1) AIDC Ltd is entitled to be paid the amount worked out using the formula set out below if AIDC Ltd has paid a contribution to the cost of the administration of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* under section 67H of that Act in respect of the financial year in which AIDC Ltd's sale day occurs:

$$\text{Contribution} \times \frac{\text{No. of refund days}}{365}$$

*contribution* means the contribution paid by AIDC Ltd in respect of that financial year.

*no. of refund days* means the total number of days in the period beginning on that sale day and ending on the last day of the financial year in which that sale day occurs.

- (2) An amount to which AIDC Ltd is entitled under subsection (1) must be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

## Part VII—Miscellaneous

### 40 Subsection 35(1)

Omit “1 July 1998”, substitute “the declared date in relation to the agreement or arrangement”.

### 41 Subsection 35(8)

Omit “1 July 1998” (wherever occurring), substitute “the declared date in relation to the agreement”.

### 42 After subsection 35(9)

Insert:

- (9A) For the purposes of subsection (9), the leaving of money on deposit with the Corporation on an “on call” basis is to be regarded as the leaving of money on deposit for a term of 24 hours.

### 43 Subsection 35(10)

Omit “1 July 1998” (wherever occurring), substitute “the declared date in relation to the agreement”.

### 44 At the end of section 35

Add:

- (11) The Minister for Finance may, by writing, determine that a specified date is the *declared date* in relation to a specified agreement or a specified arrangement for the purposes of this section. The date must be after the date of commencement of this subsection and before 1 July 1998.

Note: For specification by class, see section 46 of the *Acts Interpretation Act 1901*.

- (12) A determination under subsection (11) has effect accordingly.

- (13) A copy of a determination under subsection (11) is to be published in the *Gazette* within 14 days after the making of the determination.
- (14) To avoid doubt, an instrument made under subsection (11) is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.
- (15) If no determination is in force under subsection (11) in relation to an agreement or arrangement, then, for the purposes of this section, the ***declared date*** in relation to the agreement or arrangement is 1 July 1998.

#### **45 After section 36**

Insert:

#### **36A Ministers not taken to be directors of bodies corporate**

A Minister is not taken to be a director of a body corporate for the purposes of the Corporations Law because of the powers that are conferred on the Minister concerned by this Act.

#### **46 Paragraph 37(2C)(f)**

Repeal the paragraph, substitute:

- (f) specify the total of the amounts that became payable to the Commonwealth during the year under section 24A.

#### **47 After section 37**

Insert:

#### **37A Delegation by Minister**

- (1) The Minister may, by writing, delegate to:
  - (a) the Secretary to the Department; or
  - (b) the Chief Executive of the Office of Asset Sales; or
  - (c) a person holding or performing the duties of a Senior Executive Service office (whether or not in the Department);all or any of the functions and powers conferred on the Minister by this Act.

(2) In this section:

*Senior Executive Service office* has the same meaning as in the *Public Service Act 1922*.

#### **48 Transitional—appointment of Chairman**

- (1) This item applies to the person who was the Chairman immediately before the commencement of this item.
- (2) The *Australian Industry Development Corporation Act 1970* has effect as if the Minister had, by instrument under section 11 of that Act, appointed the person as the Chairman with effect from the commencement of this item.

#### **49 Transitional—appointment of Chief Executive**

- (1) This item applies to the person who was the Chief Executive immediately before the commencement of this item.
- (2) The *Australian Industry Development Corporation Act 1970* has effect as if the Board had, by instrument under section 13 of that Act, appointed the person as the Chief Executive with effect from the commencement of this item.

#### **50 Transitional—appointment of ordinary Directors**

- (1) This item applies to a person (other than the Chairman or the Chief Executive) who was a Director immediately before the commencement of this item.
- (2) The *Australian Industry Development Corporation Act 1970* has effect as if the Minister had, by instrument under section 11 of that Act, appointed the person as an ordinary Director with effect from the commencement of this item.

#### **51 Transitional—section 9 and paragraph 19(3)(b) of the *Australian Industry Development Corporation Act 1970***

If Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* does not commence before the day on which this Act receives the Royal Assent, the amendments of section 9 and paragraph 19(3)(b) of the *Australian Industry Development Corporation Act 1970* made by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* are taken never to have commenced.

## **Schedule 2—Abolition of the Australian Industry Development Corporation**

### *Administrative Decisions (Judicial Review) Act 1977*

#### **1 Paragraph (k) of Schedule 2**

Omit “Australian Industry Development Corporation”.

### *Australian Industry Development Corporation Act 1970*

#### **2 The whole of the Act**

Repeal the Act.

#### **3 Transitional—taxation matters**

Despite the repeal of sections 29Z, 29ZA, 29ZB and 29ZC of the *Australian Industry Development Corporation Act 1970* by this Schedule, those sections continue to apply, in relation to AIDC Ltd, as if those repeals had not happened.

#### **4 Transitional—references in instruments**

Despite the repeal of sections 29J, 33E, 33K, 33L, 33M, 33P, 33Q and 33R of the *Australian Industry Corporation Act 1970* by this Schedule, those sections continue to apply, in relation to references in instruments, as if those repeals had not happened.

### *Freedom of Information Act 1982*

#### **5 Part I of Schedule 2**

Omit “Australian Industry Development Corporation”.

### *Legislative Instruments Act 1997*

#### **6 Schedule 2**

Omit “*Australian Industry Development Corporation Act 1970*”.

#### **7 Schedule 3**

Omit “Australian Industry Development Corporation”.

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***Loans (Australian Industry Development Corporation) Act  
1974***

**8 The whole of the Act**

Repeal the Act.

***National Crime Authority Act 1984***

**9 Schedule 2**

Omit “Australian Industry Development Corporation”.

***Occupational Health and Safety (Commonwealth  
Employment) Act 1991***

**10 Schedule**

Omit “Australian Industry Development Corporation”.

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[*Minister’s second reading speech made in—  
House of Representatives on 27 February 1997  
Senate on 20 March 1997*]

(14/97)

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**Schedule 2** Abolition of the Australian Industry Development Corporation

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I HEREBY CERTIFY that the above is a fair print of the AIDC Sale Bill 1997 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

*Clerk of the House of Representatives*

IN THE NAME OF HER MAJESTY, I assent to this Act.

*Governor-General*  
1997