



# **Australian Trade Commission Legislation Amendment Act 2006**

**No. 56, 2006**

**An Act to amend the law relating to the Australian  
Trade Commission, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Australian Trade Commission Legislation Amendment Act 2006**

**No. 56, 2006**

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## **An Act to amend the law relating to the Australian Trade Commission, and for related purposes**

[Assented to 21 June 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Trade Commission  
Legislation Amendment Act 2006*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 June 2006
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2006 (see F2006L01897)
3. Schedule 1, Part 2	At the same time as the provision(s) covered by table item 2 commence. However, the provision(s) do not commence at all if section 3 of the <i>Export Market Development Grants Legislation Amendment Act 2006</i> commences before that time.	Does not commence
4. Schedule 2, Part 1	At the same time as the provision(s) covered by table item 2.	1 July 2006
5. Schedule 2, Part 2, Division 1	The later of: (a) the time at which the provision(s) covered by table item 2 commence; and (b) immediately after section 3 of the <i>Export Market Development Grants Legislation Amendment Act 2006</i> commences.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2006 (paragraph (a) applies)

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 2, Part 2, Division 2	At the same time as the provision(s) covered by table item 2 commence.  However, the provision(s) do not commence at all if section 3 of the <i>Export Market Development Grants Legislation Amendment Act 2006</i> commences before that time.	Does not commence
7. Schedules 3 and 4	At the same time as the provision(s) covered by table item 2.	1 July 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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

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—Amendment of the Australian Trade Commission Act 1985

### Part 1—Main amendments

#### *Australian Trade Commission Act 1985*

##### 1 Part I (heading)

Repeal the heading, substitute:

### Part 1—Preliminary

##### 2 Subsection 3(1)

Repeal the subsection, substitute:

(1) In this Act:

*Australia* includes the Territories to which this Act extends.

*Australian organisation* means:

- (a) any of the following entities carrying on a business in Australia:
  - (i) a natural person;
  - (ii) a partnership;
  - (iii) a company incorporated or formed in Australia; or
- (b) an authority or body (including a body corporate and a corporation sole):
  - (i) established for a purpose of the Commonwealth by, or in accordance with the provisions of, a law of the Commonwealth or of the Australian Capital Territory; or
  - (ii) established for a purpose of a State by, or in accordance with the provisions of, a law of the State;

and includes an Agency (within the meaning of the *Public Service Act 1999*) and a Department of the Public Service of a State, but does not include the Commission.

*CEO* means the Chief Executive Officer referred to in section 7B.

**Commission** means the Australian Trade Commission established by section 7.

**corporate plan** means a plan developed by the CEO in accordance with section 64, and includes such a plan as varied in accordance with section 66.

**Department of State**, in relation to the Northern Territory, means a Department of that Territory.

**overseas development project** means a project by way of:

- (a) the construction of works; or
  - (b) the provision of services; or
  - (c) the design, supply or installation of equipment or facilities; or
  - (d) the testing in the field of agricultural practices;
- (including any necessary preliminary studies, investigations or planning) that is to be carried out in a foreign country.

**State** includes the Northern Territory.

### **3 Subsection 3(2)**

Repeal the subsection, substitute:

- (2) In this Act, a reference to trade between Australia and foreign countries includes a reference to any transaction (including the rendering of a service) involving a consideration in money or money's worth accruing from a person in the course of carrying on business or other activities outside Australia to a person carrying on business or other activities in Australia.

### **4 Subsection 3(3)**

Repeal the subsection.

### **5 At the end of section 3**

Add:

- (5) In any other Act, a reference to an employee of the Australian Trade Commission is a reference to a person engaged by the CEO under section 74 of the *Public Service Act 1999*.

### **6 Part II (heading)**

Repeal the heading, substitute:

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## **Part 2—Establishment and function of the Australian Trade Commission**

### **7 Subsections 7(2), (3) and (4)**

Repeal the subsections, substitute:

- (2) The Commission consists of:
- (a) the CEO; and
  - (b) the staff of the Commission referred to in section 60.

### **8 After section 7**

Insert:

## **Part 3—Establishment and functions of the CEO**

### **7A Function of the Australian Trade Commission**

The function of the Commission (other than the CEO) is to assist the CEO in the performance of his or her functions.

### **9 Before section 8**

Insert:

### **7B The Chief Executive Officer**

There is to be a Chief Executive Officer of the Commission.

Note: For the appointment, terms and conditions of the CEO, see Division 1 of Part 6.

### **10 Section 8**

Omit “Commission” (wherever occurring), substitute “CEO”.

Note: The heading to section 8 is altered by omitting “**Commission**” and substituting “**the CEO**”.

### **11 Subsection 9(1)**

Omit “Commission shall perform its”, substitute “CEO must perform his or her”.

**12 Subsection 9(2)**

Omit “its functions, the Commission shall”, substitute “his or her functions, the CEO must”.

**13 Paragraph 9(2)(a)**

Omit “it”, substitute “the CEO”.

**14 Subparagraph 9(2)(b)(i)**

After “Commission”, insert “and the CEO”.

**15 Subparagraph 9(2)(b)(ii)**

Omit “its”.

**16 After section 9**

Insert:

**9A Overseas exercise of CEO’s powers**

The powers of the CEO may be exercised, on behalf of the Commonwealth, in Australia or elsewhere.

**9B CEO may charge fees**

The CEO may charge fees for the provision of services, or the performance of other work, in connection with the performance of his or her functions under this Act.

**17 Subsection 10(1)**

Omit “Commission”, substitute “CEO”.

**18 Subsection 10(1)**

Omit “its” (wherever occurring), substitute “his or her”.

**19 At the end of subsection 10(1)**

Add:

Note: A direction under this section is included in the annual report: see section 92.

**20 Subsection 10(2)**

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Repeal the subsection.

**21 Subsection 10(3)**

Omit “Commission”, substitute “CEO”.

**22 Subsection 10(3)**

Omit “or under a scheme approved by the Minister under section 30 of this Act”.

**23 Subsection 10(5)**

Omit “Commission”, substitute “CEO”.

**24 At the end of section 10**

Add:

(6) A direction under this section is not a legislative instrument.

**25 Parts III and IV**

Repeal the Parts.

**26 Part VI**

Repeal the Part, substitute:

**Part 6—CEO and staff**

**Division 1—Chief Executive Officer**

**51 Appointment of Chief Executive Officer**

- (1) The CEO is to be appointed by the Minister by written instrument.
- (2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (3) An appointment under this section is not ineffective merely because of a defect or irregularity in relation to the appointment.

*Terms and conditions*

- (4) The CEO holds office on the terms and conditions (if any) in respect of matters not provided for by this Act that are determined by the Minister.

**52 Appointment to be full-time**

The CEO holds office on a full-time basis.

**54 Remuneration and allowances**

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

**55 CEO not to engage in paid employment**

The CEO must not engage in paid employment outside the duties of his or her office except with the Minister's approval.

**56 Acting CEO**

- (1) The Minister may appoint a person to act as the CEO:
  - (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: Section 33A of the *Acts Interpretation Act 1901* contains provisions relating to acting appointments.

- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or

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

### **57 Leave of absence**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **58 Resignation**

The CEO may resign from office by giving the Minister a written resignation that has been signed by the CEO.

### **59 Termination**

- (1) The Minister may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the CEO if:
  - (a) the CEO:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office.
- (3) The Minister must terminate the appointment of the CEO if, in the Minister's opinion, the performance of the CEO has been unsatisfactory for a significant period of time.

## **Division 2—Staff of the Commission**

### **60 Staff of the Commission**

- (1) The staff of the Commission are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the CEO and the staff of the Commission together constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.

### **61 Locally engaged employees**

To avoid doubt, the CEO may, under section 74 of the *Public Service Act 1999*, engage persons overseas to perform duties overseas as employees.

### **62 Consultants**

The CEO may, on behalf of the Commonwealth, engage consultants to perform services for the CEO related to the CEO's functions.

### **27 Part VII (heading)**

Repeal the heading, substitute:

## **Part 7—Corporate plans**

### **28 Division 1 of Part VII (heading)**

Repeal the heading.

### **29 Subsection 64(1)**

Repeal the subsection, substitute:

- (1) The CEO must develop, and prepare in written form, a corporate plan, for the period specified in the plan, that:
  - (a) defines the principal objectives of the CEO in performing his or her functions during that period; and

- (b) gives a broad outline of the strategies to be pursued by the CEO to achieve those objectives.

Note: The heading to section 64 is altered by omitting “**Commission**” and substituting “**CEO**”.

**30 Subsection 64(2)**

Omit “Division”, substitute “Part”.

**31 Subsection 64(3)**

Repeal the subsection.

**32 Subsection 65(1)**

Omit “not less than 3 months, or such longer period as is prescribed,”.

**33 Section 66**

Omit “Commission” (wherever occurring), substitute “CEO”.

**34 Division 2 of Part VII**

Repeal the Division.

**35 Part VIII**

Repeal the Part.

**36 Part IX (heading)**

Repeal the heading, substitute:

**Part 9—Miscellaneous**

**37 Sections 90 to 92**

Repeal the sections, substitute:

**90 Delegations by Minister and CEO**

- (1) The Minister may, either generally or as otherwise provided in the instrument of delegation, by signed writing, delegate to the CEO all or any of the functions and powers of the Minister:
- (a) under this Act (other than this power of delegation or the Minister’s powers under sections 65 and 66); and
  - (b) under the *Export Market Development Grants Act 1997*.

- (2) The CEO may, either generally or as otherwise provided in the instrument of delegation, by signed writing, delegate all or any of his or her functions and powers under this Act or the *Export Market Development Grants Act 1997* (other than this power of delegation) to a member of the staff of the Commission referred to in section 60.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

## **92 Annual reports**

- (1) The CEO must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report on the Commission's operations during that financial year.

Note: Section 34C of the *Acts Interpretation Act 1901* contains provisions relating to annual reports.

- (2) A report under subsection (1) must include the following:
- (a) information about the Commission's operations under the *Export Market Development Grants Act 1997*;
  - (b) particulars of all directions given by the Minister to the CEO under subsection 10(1), other than any direction that includes a statement to the effect that the direction is not to be disclosed:
    - (i) for reasons of national security; or
    - (ii) because its disclosure would have an adverse effect on the financial interests or property interests of the Commonwealth or of an instrumentality of the Commonwealth.
- (3) The Minister must cause a copy of each annual report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

## **38 Subsection 94(1)**

Repeal the subsection, substitute:

- (1) This section applies to a person who is or has been:
- (a) the CEO; or
  - (b) a member of the staff of the Commission referred to in section 60; or

(c) a consultant engaged under section 62.

**39 Subsection 94(4)**

Omit “the Commission” (first occurring), substitute “a person to whom this section applies”.

**40 Paragraph 94(4)(b)**

Omit “Commission” (wherever occurring), substitute “CEO”.

**41 Sections 95 and 96**

Repeal the sections.

**Part 2—Amendment contingent on the Export Market  
Development Grants Legislation  
Amendment Act 2006**

*Australian Trade Commission Act 1985*

**42 Subsection 64(4)**

Repeal the subsection, substitute:

- (4) The reference in subsection (1) to the functions of the CEO under this Act does not include a reference to any functions conferred on the CEO by the *Export Expansion Grants Act 1978*.

## **Schedule 2—Consequential amendment of the Export Market Development Grants Act 1997**

### **Part 1—Main amendments**

#### *Export Market Development Grants Act 1997*

##### **1 Reader’s guide (purpose of this Act)**

Before “Austrade”, insert “the CEO of”.

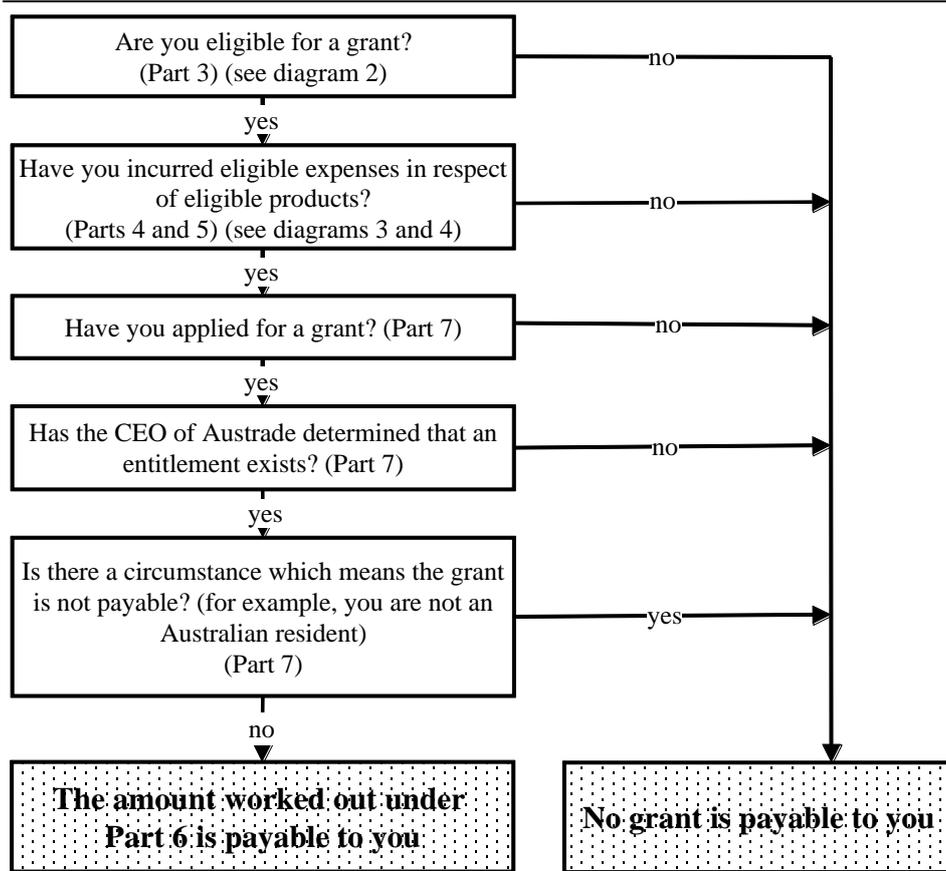
##### **2 Reader’s guide (related legislation)**

Before “Austrade” (wherever occurring), insert “the CEO of”.

##### **3 Reader’s guide (diagram 1)**

Repeal the diagram, substitute:

#### **Diagram 1—Is an amount of grant payable to you? (Overview of Act)**



**4 Reader’s guide (diagram 3)**

Before “Austrade” (wherever occurring), insert “the CEO of”.

**5 List of terms defined in Part 9**

Insert the following entry in its appropriate alphabetical position (determined on a letter-by-letter basis):

CEO of Austrade

**6 Paragraph 6(1)(e)**

Before “Austrade”, insert “the CEO of”.

**7 Paragraph 6(1)(f)**

Omit “Austrade”, substitute “the CEO”.

**8 Subsection 6(2)**

Before “Austrade”, insert “the CEO of”.

**9 Subsection 6(2) (note)**

Omit “*Austrade, Australian law,*”, substitute “*Australian law, CEO of Austrade,*”.

**10 Paragraph 7(1)(a)**

Omit “in Austrade’s opinion”, substitute “in the opinion of the CEO of Austrade”.

**11 Paragraph 7(1)(b)**

Omit “in Austrade’s opinion”, substitute “in the CEO’s opinion”.

**12 Paragraph 7(1)(h)**

Omit “Austrade”, substitute “the CEO”.

**13 Subsection 7(1) (note)**

Omit “*Austrade*”, substitute “*CEO of Austrade*”.

**14 Subsection 7(2) (note)**

Omit “, *Austrade*”.

**15 Paragraph 7(4)(aa)**

Omit “in Austrade’s opinion”, substitute “in the opinion of the CEO of Austrade”.

**16 Paragraphs 7(4)(a) and (h)**

Omit “Austrade”, substitute “the CEO”.

**17 Subsection 7(4) (note)**

Omit “*Austrade*”, substitute “*CEO of Austrade*”.

**18 Subsection 20(1)**

Before “Austrade” (first occurring), insert “The CEO of”.

Note: The heading to section 20 is altered by inserting “**The CEO of**” before “**Austrade**”.

**19 Subsection 20(1)**

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Omit “Austrade” (second occurring), substitute “the CEO”.

**20 Subsection 20(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

**21 Subsection 20(2)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**22 Subsection 20(3)**

Before “Austrade”, insert “the CEO of”.

**23 Subsection 21(1)**

Before “Austrade”, insert “The CEO of”.

**24 Subsection 21(2)**

Before “Austrade”, insert “the CEO of”.

**25 Paragraph 21(3)(a)**

Before “Austrade”, insert “the CEO of”.

**26 Paragraph 21(3)(b)**

Omit “Austrade”, substitute “the CEO”.

**27 Subsection 22(1)**

Before “Austrade” (first occurring), insert “the CEO of”.

Note: The heading to section 22 is altered by inserting “**The CEO of**” before “**Austrade**”.

**28 Subsection 22(1)**

Omit “Austrade” (second and third occurring), substitute “the CEO”.

**29 Subsection 22(2)**

Before “Austrade”, insert “The CEO of”.

**30 Subsection 22(3)**

Before “Austrade” (first occurring), insert “The CEO of”.

**31 Subsection 22(3)**

Omit “Austrade” (second occurring), substitute “the CEO”.

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**32 Subsection 25(4)**

Before “Austrade”, insert “the CEO of”.

**33 Subsection 25(4)**

Omit “to it”, substitute “to him or her”.

**34 Paragraph 25A(1)(c)**

Omit “in Austrade’s opinion”, substitute “in the opinion of the CEO of Austrade”.

**35 Subsection 25A(1) (note 2)**

Omit “Austrade’s decisions”, substitute “Decisions”.

**36 Subsection 25A(2)**

Before “Austrade”, insert “the CEO of”.

**37 Subsection 25A(2)**

Omit “to it”, substitute “to him or her”.

**38 Section 26**

Before “Austrade”, insert “the CEO of”.

**39 Subsection 27(1)**

Before “Austrade”, insert “the CEO of”.

**40 Section 30**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 30 is altered by inserting “**the CEO of**” before “**Austrade**”.

**41 Subsection 33(2) (table)**

Omit “in Austrade’s opinion” (wherever occurring), substitute “in the opinion of the CEO of Austrade”.

**42 Subsection 33(2) (note 2)**

Omit “Austrade’s decisions”, substitute “Decisions”.

**43 Paragraph 45(a)**

Before “Austrade”, insert “the CEO of”.

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**44 Paragraph 47(1)(a)**

Before “Austrade” (first occurring), insert “the CEO of”.

**45 Paragraph 47(1)(a)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**46 Subsection 52(1)**

Omit “in Austrade’s opinion”, substitute “in the opinion of the CEO of Austrade”.

**47 Subsection 52(1) (note)**

Omit “Austrade’s decisions”, substitute “Decisions”.

**48 Paragraph 57(2)(c)**

Before “Austrade”, insert “the CEO of”.

**49 Section 59**

Before “Austrade”, insert “the CEO of”.

**50 Subsection 61(4)**

Before “Austrade”, insert “the CEO of”.

**51 Section 64**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 64 is altered by inserting “**the CEO of**” before “**Austrade**”.

**52 Subsections 69(1) and 70(1) and (2)**

Before “Austrade”, insert “the CEO of”.

**53 Paragraph 71(a)**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 71 is altered by inserting “**the CEO of**” before “**Austrade**”.

**54 Paragraph 71(b)**

Omit “Austrade”, substitute “the CEO”.

**55 Subsection 72(1)**

Before “Austrade” (first occurring), insert “The CEO of”.

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Note: The heading to section 72 is altered by inserting “**The CEO of**” before “**Austrade**”.

**56 Subsection 72(1)**

Omit “Austrade” (second, third and fourth occurring), substitute “the CEO”.

**57 Subsection 72(1)**

Omit “its”, substitute “his or her”.

**58 Subsection 72(2)**

Before “Austrade” (first occurring), insert “The CEO of”.

**59 Subsection 72(2)**

Omit “Austrade” (second and third occurring), substitute “the CEO”.

**60 Subsection 72(2A)**

Before “Austrade” (first occurring), insert “The CEO of”.

**61 Subsection 72(2A)**

Omit “Austrade” (second, third and fourth occurring), substitute “the CEO”.

**62 Subsection 72(3)**

Before “Austrade” (first occurring), insert “the CEO of”.

**63 Subsection 72(3)**

Omit “Austrade” (second and third occurring), substitute “the CEO”.

**64 Subsection 73(1)**

Before “Austrade” (first occurring), insert “The CEO of”.

Note: The heading to section 73 is altered by inserting “**the CEO of**” before “**Austrade**”.

**65 Paragraphs 73(1)(b) and (c)**

Omit “Austrade”, substitute “the CEO”.

**66 Subsection 73(2)**

Before “Austrade”, insert “The CEO of”.

**67 Subsection 74(1)**

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Before “Austrade”, insert “the CEO of”.

**68 Sections 75 and 76**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 76 is altered by inserting “**The CEO of**” before “**Austrade**”.

**69 Section 79**

Before “Austrade” (first occurring), insert “The CEO of”.

**70 Section 79**

Omit “Austrade” (second and third occurring), substitute “the CEO”.

**71 Subdivision 1 of Division 3 of Part 7 (heading)**

Repeal the heading, substitute:

**Subdivision 1—Duties of the CEO of Austrade**

**72 Subsection 80(1)**

Before “Austrade” (first occurring), insert “The CEO of”.

Note: The heading to section 80 is altered by inserting “**The CEO of**” before “**Austrade**”.

**73 Paragraph 80(1)(c)**

Omit “Austrade”, substitute “the CEO”.

**74 Subsection 80(2)**

Before “Austrade”, insert “the CEO of”.

**75 Subsection 81(1)**

Omit “If Austrade’s determination”, substitute “If a determination by the CEO of Austrade”.

**76 Subsection 81(2)**

Before “Austrade”, insert “the CEO of”.

**77 Paragraph 81(3)(b)**

Before “Austrade”, insert “the CEO of”.

**78 Section 82**

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Omit “If Austrade’s determination that the”, substitute “If a determination by the CEO of Austrade that an”.

**79 Paragraph 82(a)**

Omit “Austrade”, substitute “the CEO”.

**80 Paragraph 83(1)(a)**

Omit “Austrade’s determination”, substitute “the determination by the CEO of Austrade”.

**81 Paragraph 83(1)(b)**

Omit “Austrade’s”, substitute “the CEO’s”.

**82 Section 87AA**

Before “Austrade” (wherever occurring), insert “the CEO of”.

**83 Section 88**

Before “Austrade” (wherever occurring), insert “the CEO of”.

**84 Subsections 89(1) and (2)**

Before “Austrade”, insert “the CEO of”.

**85 Subsection 89(5) (note)**

Before “Austrade”, insert “the CEO of”.

**86 Subsection 91(1)**

Before “Austrade” (first occurring), insert “the CEO of”.

**87 Subsection 91(1)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**88 Paragraph 91(1)(a)**

Omit “Austrade’s”, substitute “the CEO’s”.

**89 Paragraph 91(1)(b)**

Omit “Austrade”, substitute “the CEO”.

**90 Subsection 91(2)**

Before “Austrade”, insert “the CEO of”.

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**91 Subsection 91(2) (note)**

Before “Austrade”, insert “the CEO of”.

**92 Subsection 92(4)**

Before “Austrade”, insert “The CEO of”.

**93 Subsection 97(1)**

Before “Austrade”, insert “the CEO of”.

**94 Subsection 98(1)**

Before “Austrade”, insert “the CEO of”.

**95 Subsection 98(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

**96 Paragraph 98(2)(b)**

Omit “Austrade”, substitute “the CEO”.

**97 Subsection 98(4)**

Before “Austrade” (first occurring), insert “the CEO of”.

**98 Subsection 98(4)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**99 Section 99**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 99 is altered by omitting “**Austrade’s decisions**” and substituting “**decisions of CEO of Austrade**”.

**100 Subsection 100(1)**

Before “Austrade”, insert “The CEO of”.

**101 Subsection 100(2)**

Before “Austrade”, insert “the CEO of”.

**102 Subsection 100(3)**

Before “Austrade” (first occurring), insert “the CEO of”.

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**103 Paragraphs 100(3)(a) and (d)**

Omit “Austrade”, substitute “the CEO”.

**104 Paragraph 101(1)(a)**

Before “Austrade”, insert “the CEO of”.

**105 Paragraphs 101(1)(b) to (c)**

Omit “Austrade”, substitute “the CEO”.

**106 Paragraph 101(1)(c)**

Omit “its”, substitute “his or her”.

**107 Paragraph 101(1)(d)**

Omit “Austrade”, substitute “the CEO”.

**108 Subsection 101(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

**109 Subsection 101(2)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**110 Subsection 101(2)**

Omit “its”, substitute “his or her”.

**111 Subsection 101(3)**

Before “Austrade”, insert “The CEO of”.

**112 Subsection 101(3)**

Omit “its”, substitute “his or her”.

**113 Subsection 103(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

**114 Subsection 103(2)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**115 Subsection 103(3)**

Before “Austrade” (first occurring), insert “the CEO of”.

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**116 Subsection 103(3)**

Omit “Austrade” (second and third occurring), substitute “the Commonwealth”.

**117 Subsections 104(1) and (2)**

Before “Austrade”, insert “the CEO of”.

**118 Subsection 104(3)**

Before “Austrade” (first occurring), insert “the CEO of”.

**119 Subsection 104(3)**

Omit “Austrade” (second and third occurring), substitute “the Commonwealth”.

**120 Subsection 104(4)**

Omit “Managing Director of Austrade, or by a person acting in the office of Managing Director of Austrade”, substitute “CEO of Austrade, or by a person acting as the CEO of Austrade”.

**121 Paragraph 106(2)(a)**

Before “Austrade”, insert “the CEO of”.

**122 Section 107 (definitions of *approved body*, *approved joint venture* and *approved trading house*)**

Before “Austrade”, insert “the CEO of”.

**123 Section 107**

Insert:

*CEO of Austrade* means the Chief Executive Officer of Austrade referred to in section 7B of the *Australian Trade Commission Act 1985*.

**124 Section 107 (definition of *payout factor*)**

Before “Austrade”, insert “the CEO of”.

**125 Sections 109 and 111**

Before “Austrade”, insert “the CEO of”.

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**Part 2—Amendments contingent on the Export Market Development Grants Legislation Amendment Act 2006**

**Division 1—Amendments that commence after the EMDG legislation**

*Export Market Development Grants Act 1997*

**126 Paragraph 24(b)**

Before “Austrade”, insert “the CEO of”.

**127 Section 24 (note)**

Omit “Austrade’s decisions”, substitute “Decisions”.

**128 Subsection 33(2) (note 3)**

Omit “Austrade can make certain adjustments if it”, substitute “the CEO of Austrade can make certain adjustments if he or she”.

**129 Subsection 37(1) (note 2)**

Omit “Austrade’s decisions”, substitute “Decisions”.

**130 Subsection 37(1A)**

Before “Austrade”, insert “the CEO of”.

**131 Subsection 93(2)**

Before “Austrade”, insert “the CEO of”.

**132 Subparagraph 94(1)(b)(ii)**

Before “Austrade”, insert “the CEO of”.

**133 Subsection 94(1) (note)**

Omit “Austrade’s decisions”, substitute “Decisions”.

**134 Subsection 94(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

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**135 Paragraph 94(2)(b)**

Omit “Austrade” (wherever occurring), substitute “the CEO”.

**136 Section 95**

Before “Austrade”, insert “the CEO of”.

**137 Subsection 96(1)**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 96 is altered by inserting “**the CEO of**” before “**Austrade**”.

**138 Subsection 96(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

**139 Paragraph 96(2)(a)**

Omit “Austrade is of that opinion and of Austrade’s”, substitute “the CEO is of that opinion and of the CEO’s”.

**140 Paragraph 96(2)(b)**

Omit “Austrade”, substitute “the CEO”.

**141 Subsection 96(3)**

Before “Austrade” (first occurring), insert “the CEO of”.

**142 Subsection 96(3)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**143 Paragraph 96(3)(a)**

Omit “it”, substitute “he or she”.

**144 Subsection 96(4)**

Before “Austrade”, insert “the CEO of”.

**145 Subsection 96(4)**

Omit “Austrade’s”, substitute “the CEO’s”.

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**Division 2—Amendments that do not commence if the EMDG legislation commences first**

*Export Market Development Grants Act 1997*

**146 Reader’s guide (diagram 3)**

Before “Austrade” (wherever occurring), insert “the CEO of”.

**147 Subsection 10(1) (table item 3)**

Omit “in Austrade’s opinion”, substitute “in the opinion of the CEO of Austrade”.

**148 Subsection 10(1) (note)**

Omit “*Austrade*”, substitute “*CEO of Austrade*”.

**149 Section 12**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 12 is altered by inserting “**the CEO of**” before “**Austrade**”.

**150 Subsection 24(3)**

Before “Austrade”, insert “the CEO of”.

**151 Subsection 24(3)**

Omit “it”, substitute “him or her”.

**152 Subsection 24(4)**

Before “Austrade”, insert “the CEO of”.

**153 Subsection 24(4)**

Omit “it”, substitute “him or her”.

**154 Subsection 33(2) (table item 1B)**

Omit “in Austrade’s opinion”, substitute “in the opinion of the CEO of Austrade”.

**155 Subsection 35(1)**

Before “Austrade”, insert “The CEO of”.

**156 Subsection 35(2)**

Before “Austrade” (first occurring), insert “the CEO of”.

**157 Subsection 35(2)**

Omit “Austrade” (second occurring), substitute “the CEO”.

**158 Paragraph 35(2)(a)**

Omit “it is of that opinion and of its”, substitute “the CEO is of that opinion and of the CEO’s”.

**159 Paragraph 35(2)(b)**

Omit “Austrade”, substitute “the CEO”.

**160 Subsection 35(3)**

Before “Austrade” (first occurring), insert “the CEO of”.

**161 Paragraph 35(3)(a)**

Omit “Austrade must determine the amount that it”, substitute “the CEO must determine the amount that he or she”.

**162 Subsection 35(4)**

Before “Austrade”, insert “the CEO of”.

**163 Subsection 35(4)**

Omit “Austrade’s”, substitute “the CEO’s”.

**164 Section 64**

Before “Austrade”, insert “the CEO of”.

Note: The heading to section 64 is altered by inserting “**the CEO of**” before “**Austrade**”.

**165 Section 93**

Before “Austrade”, insert “the CEO of”.

**166 Paragraph 94(2)(b)**

Before “Austrade”, insert “the CEO of”.

**167 Subsection 94(3)**

Before “Austrade” (first occurring), insert “The CEO of”.

**168 Paragraph 94(3)(d)**

Omit “Austrade” (wherever occurring), substitute “the CEO”.

**169 Section 95**

Before “Austrade” (first occurring), insert “the CEO of”.

**170 Section 95**

Omit “Austrade” (second occurring), substitute “the CEO”.

**171 Section 96**

Before “Austrade” (first occurring), insert “the CEO of”.

Note: The heading to section 96 is altered by inserting “**the CEO of**” before “**Austrade**”.

**172 Section 96**

Omit “Austrade” (second occurring), substitute “the CEO”.

**173 Paragraph 96(c)**

Omit “as it”, substitute “as he or she”.

**174 Paragraphs 101(1)(ba) and (baa)**

Omit “Austrade”, substitute “the CEO”.

**175 Paragraph 101(1)(d)**

Omit “Austrade”, substitute “the CEO”.

**176 Subsections 106A(1) and (2)**

Before “Austrade”, insert “the CEO of”.

**177 Subsection 106A(3)**

Before “Austrade”, insert “The CEO of”.

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## **Schedule 3—Other consequential amendments**

### ***Commonwealth Borrowing Levy Act 1987***

#### **1 Schedule**

Omit “11. Australian Trade Commission”.

### ***Export Finance and Insurance Corporation Act 1991***

#### **2 Subsection 3(1) (definition of *appointed member*)**

Omit “Managing Director” (second occurring), substitute “Chief Executive Officer”.

#### **3 Paragraph 34(1)(d)**

Omit “Managing Director”, substitute “Chief Executive Officer”.

#### **4 Subsection 34(2)**

Omit “Managing Director” (second occurring), substitute “Chief Executive Officer”.

#### **5 Subsections 34(5) and 38(6)**

Omit “Managing Director”, substitute “Chief Executive Officer”.

### ***Public Service Act 1999***

#### **6 Subsection 39(1)**

Omit “or a person employed under the *Australian Trade Commission Act 1985*”.

## Schedule 4—Transitional provisions

### Part 1—Preliminary

#### 1 Definitions

(1) In this Schedule:

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

**amend** includes repeal and remake.

**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.

**assets official**, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

**commencement time** means the time when this Schedule commences.

**financial liability** means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

**instrument**:

- (a) includes:
  - (i) a contract, deed, undertaking or agreement; and
  - (ii) a notice, authority, order or instruction; and
  - (iii) an instrument made under an Act or regulations; and
  - (iv) regulations; but
- (b) does not include an Act.

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

**land** means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**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.

**new Commission** means the Australian Trade Commission established by the new law.

**new law** means the *Australian Trade Commission Act 1985* as in force immediately after the commencement time.

**old Commission** means the Australian Trade Commission established by the old law.

**old law** means the *Australian Trade Commission Act 1985* as in force immediately before the commencement time.

- (2) Subject to subitem (1), an expression used in this Schedule that is also used in the new law has the same meaning in this Schedule as it has in the new law.

## **Part 2—Assets, liabilities and legal proceedings**

### **2 Vesting of assets of old Commission**

- (1) This item applies to the assets of the old Commission immediately before the commencement time.
- (2) At the commencement time, the assets to which this item applies cease to be assets of the old Commission and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

### **3 Vesting of liabilities of old Commission**

- (1) This item applies to the liabilities of the old Commission immediately before the commencement time.
- (2) At the commencement time, the liabilities to which this item applies cease to be liabilities of the old Commission and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

### **4 Certificates relating to vesting of land**

- (1) This item applies if:
  - (a) any land vests in the Commonwealth under this Part; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the land has become vested in the Commonwealth under this Part.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 19.

- (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.

## **5 Certificates relating to vesting of assets other than land**

- (1) This item applies if:
- (a) any asset other than land vests in the Commonwealth under this Part; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the Commonwealth under this Part.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 19.

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
  - (b) make such entries in the register as are necessary, having regard to the effect of this Schedule.

## **6 Substitution of Commonwealth as a party to pending proceedings**

If any proceedings to which the old Commission was a party were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the old Commission, from the commencement time, as a party to the proceedings.

## **7 Transfer of custody of old Commission records**

- (1) This item applies to any records or documents that, immediately before the commencement time, were in the custody of the old Commission.
- (2) The records and documents are to be transferred into the custody of the CEO at or after the commencement time.

## **8 Access by Board members to records**

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of the old Commission, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the CEO.

## Part 3—Reference to, and things done by or in relation to, old Commission

### 9 References in instruments

*References to old Commission taken to be references to CEO or Commonwealth*

(1) If:

- (a) an instrument is in force immediately before the commencement time; and
- (b) the instrument contains a reference to the old Commission (including a reference to the Board, the Managing Director or the Deputy Managing Director);

the instrument has effect from the commencement time as if the reference were a reference to the CEO.

(2) However, if:

- (a) an instrument is in force immediately before the commencement time; and
- (b) the instrument relates to assets or liabilities covered by item 2 or 3; and
- (c) the instrument refers to the old Commission (including a reference to the Board, the Managing Director or the Deputy Managing Director);

the reference is to be read as a reference to the Commonwealth as necessary to give effect to item 2 or 3, as the case requires.

*References to staff of old Commission taken to be references to staff of new Commission*

(3) If:

- (a) an instrument is in force immediately before the commencement time; and
- (b) the instrument contains a reference to a member of the staff of the old Commission;

the instrument has effect from the commencement time as if the reference to the member of the staff of the old Commission were a reference to a member of the staff of the new Commission referred to in section 60 of the new law.

*Minister and regulations may provide otherwise*

- (4) The Minister may, by writing, determine that subitem (1), (2) or (3):
- (a) does not apply in relation to a specified reference; or
  - (b) applies as if:
    - (i) in the case of subitem (1)—the reference in that subitem to the CEO were a reference to the Commonwealth; or
    - (ii) in the case of subitem (2)—the reference in that subitem to the Commonwealth were a reference to the CEO; or
    - (iii) in the case of subitem (3)—the reference in that subitem to a member of the staff of the Commission were a reference to the CEO.

A determination under this subitem has effect accordingly.

- (5) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (4)(a) has effect from the commencement time as if:
- (a) in the case of an instrument covered by subitem (1)—the reference were a reference to a specified person or body other than the Commonwealth or the CEO; or
  - (b) in the case of an instrument covered by subitem (2)—the reference were a reference to a specified person or body other than the Commonwealth or the CEO; or
  - (c) in the case of an instrument covered by subitem (3)—the reference were a reference to a specified person or body other than the CEO or a member of the staff of the Commission.

*Determinations are not legislative instruments*

- (6) A determination under subitem (4) is not a legislative instrument.

## **10 Operation of laws**

*Things done by old Commission taken to be done by CEO*

- (1) If, before the commencement time, a thing was done by, or in relation to, the old Commission (including the Board, the Managing Director or

**Schedule 4** Transitional provisions

**Part 3** Reference to, and things done by or in relation to, old Commission

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the Deputy Managing Director), then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.

- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision that is amended by this Act has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.

*Minister and regulations may provide otherwise*

- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the old Commission; or
  - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a specified person or body other than the Commonwealth or the CEO.

*Meaning of **doing***

- (5) To avoid doubt, for the purposes of this item, **doing** a thing includes making an instrument.

*Determinations are not legislative instruments*

- (6) A determination made under subitem (3) is not a legislative instrument.

**11 Continued effect of certain instruments made under the old law**

The amendments made to the following sections of the *Australian Trade Commission Act 1985* do not affect the continuity of an instrument made under one of those sections:

- (a) section 10;
- (b) section 54;
- (c) section 55;
- (d) section 57;
- (e) section 64;

(f) subsection 90(2).

## **12 Financial statements and other reporting requirements**

### *Reporting requirements*

- (1) If:
- (a) immediately before the commencement time, a law required the old Commission (including the Managing Director) to provide a report (whether financial statements or otherwise) for a period; and
  - (b) the period ends after the commencement time;
- the CEO must provide the report, as required, for so much of the period as occurs before the commencement time.
- (2) If:
- (a) under subitem (1), the CEO is required to provide a report for a part of a period; and
  - (b) the CEO is also required to provide a similar report for the remainder of the period;
- the CEO may meet the requirements in a single report for the period.

### *Outstanding reporting requirements*

- (3) If:
- (a) a law required the old Commission (including the Managing Director) to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
  - (b) the report has not been provided by the commencement time;
- the CEO must provide the report as required.

## **13 Continuation of secrecy obligations**

Despite the amendment of section 94 of the *Australian Trade Commission Act 1985* by this Act, that section continues to apply after the commencement time, in relation to anything done by a person to whom that section applies immediately before that time, as if the amendments had not been made.

## Part 4—CEO and staff

### 14 CEO

The person holding office as the Managing Director under subsection 51(1) of the old law immediately before the commencement time is taken to have been duly appointed as the CEO by the Minister under subsection 51(1) of the new law:

- (a) for the balance of the person's term of appointment that remained immediately before the commencement time; and
- (b) on the same terms and conditions as applied to the person immediately before the commencement time.

### 15 Transfer of staff

- (1) The regulations may prescribe other matters of a transitional nature in relation to the transfer of staff from the old Commission to the new Commission.
- (2) Without limiting subitem (1), regulations under that subitem may provide for:
  - (a) some or all of the entitlements and obligations of the staff of the old Commission to be preserved; or
  - (b) the old Commission's staffing procedures to apply, or to continue to apply, in relation to:
    - (i) processes begun before, but not completed by, the commencement time; or
    - (ii) things done by, for or in relation to the old Commission or a staff member of the old Commission before the commencement time; or
  - (c) the new Commission's staffing procedures to apply in relation to:
    - (i) processes begun before, but not completed by, the commencement time; or
    - (ii) things done by, for or in relation to the old Commission or a staff member of the old Commission before the commencement time.
- (3) Regulations made under this item have effect despite the *Public Service Act 1999*.

- (4) In this item:  
*staffing procedures* includes procedures and policies related to recruitment, promotion, performance management, inefficiency, misconduct, forfeiture of position, fitness for duty, loss of essential qualifications, disciplinary action, reviews of or appeals against staffing decisions, transfers, redundancy, resignations, termination of employment, grievance processes and leave.

## Part 5—Miscellaneous

### 16 Appropriation of money

- (1) For the purposes of the operation of an Appropriation Act after the commencement time, references to the old Commission are to be read as references to the new Commission.
- (2) If an amount of money (the *original amount*) becomes an asset of the Commonwealth under item 2 of this Schedule, an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of the new Commission.
- (3) In this item:  
*Appropriation Act* means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

### 17 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Schedule; or
- (b) the operation of this Schedule in any other respect.

### 18 Constitutional safety net—acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

### 19 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
  - (b) is taken to have been properly given;
- unless the contrary is established.

## **20 Delegation by Minister**

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to the CEO.
- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.

## **21 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
    - (a) required or permitted by this Schedule to be prescribed; or
    - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
  - (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.
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*[Minister's second reading speech made in—  
House of Representatives on 30 March 2006  
Senate on 13 June 2006]*

(28/06)

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